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Solid Waste and
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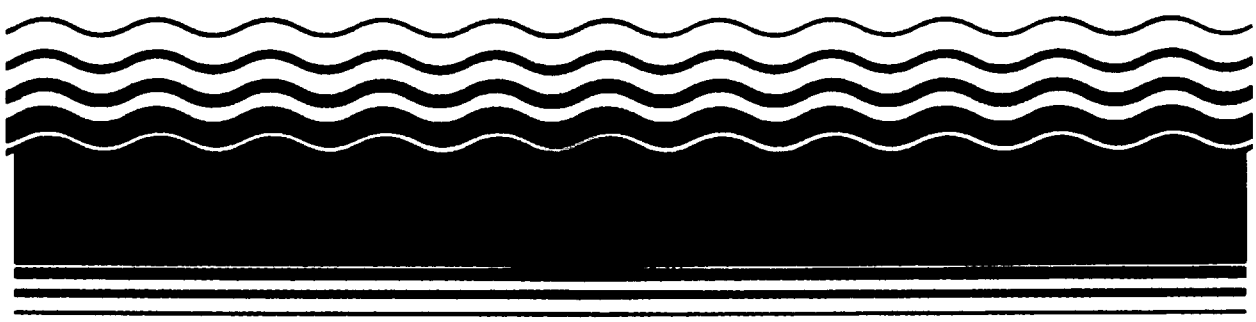
Superfund

A GUIDE TO PREPARING SUPERFUND PROPOSED PLANS, RECORDS OF DECISION, AND OTHER REMEDY SELECTION DECISION DOCUMENTS



NOTICE

This document provides guidance to EPA and State staff. It also provides guidance to the public and to the regulated community on how EPA intends to exercise its discretion in implementing its regulations. The guidance is designed to implement national policy on these issues. The document does not, however, substitute for statutes EPA administers nor their implementing regulations, nor is it a regulation itself. Thus, it does not impose legally-binding requirements on EPA, States, or the regulated community, and may not apply to a particular situation based upon the specific circumstances. EPA may change this guidance in the future, as appropriate.

ABSTRACT

This *Guide to Preparing Superfund Proposed Plans, Records of Decision, and Other Remedy Selection Decision Documents* (also commonly referred to as the "ROD Guidance") has been developed to accomplish the following:

- Provide recommended formats and content for Superfund remedial action decision documents;
- Clarify roles and responsibilities of the U.S. Environmental Protection Agency (EPA), Federal facilities, States, and Indian Tribes in developing and issuing decision documents;
- Clarify roles and responsibilities of stakeholders in the remedy selection process; and
- Explain how to address changes made to proposed and selected remedies.

The decision documents addressed by this guidance are the Proposed Plan, the Record of Decision (ROD), the Explanation of Significant Differences (ESD), and the ROD Amendment. Section 117 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), requires the issuance of decision documents for remedial actions taken pursuant to Sections 104, 106, 120, and 122. Sections 300.430(f)(2), 300.430(f)(4) and 300.435(c)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) establish the regulatory requirements for these decision documents. This guidance document provides additional guidelines and is based upon the Superfund statute and regulations.

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Preface

This guidance document is being issued to enhance the clarity and completeness of Records of Decision (RODs) and related remedy selection decision documents. It has been revised to reflect the 1990 final National Oil and Hazardous Substances Pollution Contingency Plan (NCP) and current EPA policies.

This guidance supersedes the following EPA guidance documents:

- *Guidance on Preparing Superfund Decision Documents: The Proposed Plan, The Record of Decision, Explanation of Significant Differences, The Record of Decision Amendment: Interim Final* (EPA 540-G-89-007, July 1989 (pre-publication and October 1989);
- *A Guide to Developing Superfund Records of Decision* (OSWER 9335.3-02FS-1, May 1990);
- *A Guide to Developing Superfund Proposed Plans* (OSWER 9335.3-02FS-2, May 1990);
- *Guide to Developing Superfund No Action, Interim Action, and Contingency Remedy RODs* (OSWER 9355.3-02FS-3, April 1991); and
- *Guide to Addressing Pre-ROD and Post-ROD Changes* (OSWER 9355.3-02FS-4, April 1991).

NOTE: This guidance does not cover the remedy selection process itself. This process is addressed in a separate fact sheet entitled *A Guide to Selecting Superfund Remedial Actions* (OSWER 9355.0-27FS, April 1990). Other remedy selection policies are summarized in *Rules of Thumb for Superfund Remedy Selection* (EPA 540-R-97-013, August 1997).

ACKNOWLEDGMENTS

The development of this guidance document was a team effort led by the Office of Emergency and Remedial Response (OERR). Mike Goldstein served as project manager, technical editor and contributing writer. Betsy Shaw and Bruce Means served as management/policy mentors. Janine Dinan, Kenneth Lovelace, and Sheila Igoe provided significant contributions on technical and legal policy matters. Carolyn Kenmore and Sharon Frey contributed to project management. Leslie McVickar assisted in the resolution of comments received on the final review draft. John Weiss of Industrial Economics, Incorporated and Susan Heise of ISSI, Incorporated provided superior editorial and document production support. Finally, numerous Regional and OERR staff have provided careful review and thoughtful comments which have contributed to the overall quality of this document.

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Acronyms Used in This Document

AA	Assistant Administrator
ACH	Automated Clearing House
ARAR	Applicable or Relevant and Appropriate Requirement
ATSDR	Agency for Toxic Substances and Disease Registry
BDAT	Best Demonstrated Available Technology
CA	Cooperative Agreement
CAA	Clean Air Act
CAG	Community Advisory Group
CDI	Chronic Daily Intake
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act of 1980
CERCLIS	CERCLA Information System
CFR	Code of Federal Regulations
COC	Contaminant of Concern
CWA	Clean Water Act
DNAPL	Dense Non-Aqueous Phase Liquid
DOD	Department of Defense
DOE	Department of Energy
EJ	Environmental Justice
EPA	Environmental Protection Agency
ESD	Explanation of Significant Differences
FFA	Federal Facility Agreement
FR	Federal Register
FS	Feasibility Study
FWQC	Federal Water Quality Criteria
HI	Hazard Index
HQ	Hazard Quotient
HRS	Hazard Ranking System
IAG	Interagency Agreement
IRIS	Integrated Risk Information System
LDR	Land Disposal Restriction
MACT	Maximum Achievable Control Technology
MEP	Maximum Extent Practicable
MCL	Maximum Contaminant Level
MCLG	Maximum Contaminant Level Goal
MOU	Memorandum of Understanding
NAAQS	National Ambient Air Quality Standard
NAPL	Nonaqueous Phase Liquid
NCP	National Oil and Hazardous Substances Pollution Contingency Plan
NPDES	National Pollutant Discharge Elimination System
NPL	National Priorities List
OERR	Office of Emergency and Remedial Response
O&M	Operations and Maintenance
ORC	Office of Regional Counsel
OSC	On-Scene Coordinator
OSRE	Office of Site Remediation and Enforcement
OSWER	Office of Solid Waste and Emergency Response
OU	Operable Unit
PA	Preliminary Assessment
PCOR	Preliminary Site Closeout Report
PRG	Preliminary Remediation Goal
POTW	Publicly Owned Treatment Works
PRP	Potentially Responsible Party
RA	Regional Administrator *or* Remedial Action
RAO	Remedial Action Objective
RCRA	Resource Conservation and Recovery Act
RD	Remedial Design
RfD	Reference Dose
RI	Remedial Investigation
RI/FS	Remedial Investigation/Feasibility Study
RME	Reasonable Maximum Exposure
ROD	Record of Decision
RPM	Remedial Project Manager
SACM	Superfund Accelerated Cleanup Model
SARA	Superfund Amendments and Reauthorization Act of 1986
SDWA	Safe Drinking Water Act
SF	Slope Factor
SI	Site Investigation
SMOA	Superfund Memorandum of Agreement
SSC	Superfund State Contract
SWDA	Solid Waste Disposal Act
TAG	Technical Assistance Grant
TBC	To Be Considered
TI	Technical Impracticability
TSCA	Toxic Substances Control Act
UCL	Upper Confidence Limit
VOC	Volatile Organic Compound

1.0 INTRODUCTION

1.1 PURPOSE OF THIS GUIDANCE

This *Guide to Preparing Superfund Proposed Plans, Records of Decision, and Other Remedy Selection Decision Documents* (also commonly referred to as the "ROD Guidance") has been developed to accomplish the following:

- Provide recommended formats and content for Superfund remedial action decision documents.
- Clarify roles and responsibilities of the U.S. Environmental Protection Agency (EPA), Federal facilities, States, and Indian Tribes in developing and issuing decision documents.
- Clarify roles and responsibilities of stakeholders in the remedy selection process.
- Explain how to address changes made to proposed and selected remedies.

The decision documents addressed by this guidance are the Proposed Plan, the Record of Decision (ROD), the Explanation of Significant Differences (ESD), and the ROD Amendment. Section 117 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), requires the issuance of decision documents for remedial actions taken pursuant to §§104, 106, 120, and 122. Sections 300.430(f)(2), 300.430(f)(4) and 300.435(c)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) establish the regulatory requirements for these decision documents. This guidance document provides additional guidelines and is based upon the Superfund statute and regulations.[1]

A primary purpose of the ROD guidance is to establish a recommended format for Proposed Plans, RODs, ESDs, and ROD Amendments. Because of the critical role of public participation in the remedy selection process, and the public's reliance on decision documents to understand what the lead government agency proposes and ultimately decides to do, clarity within and consistency across these documents are both important. Specifically, the use of these recommended formats should accomplish the following:

- Encourage consistency among EPA Regional Offices, States, and other Federal agencies implementing the Superfund program with respect to the organization, basic content, and level of detail of decision documents;
- Help ensure that all statutory and regulatory documentation requirements are met; and
- Promote clear and logical presentations of the rationales for remedy selection decisions based on site-specific information and supporting analysis.

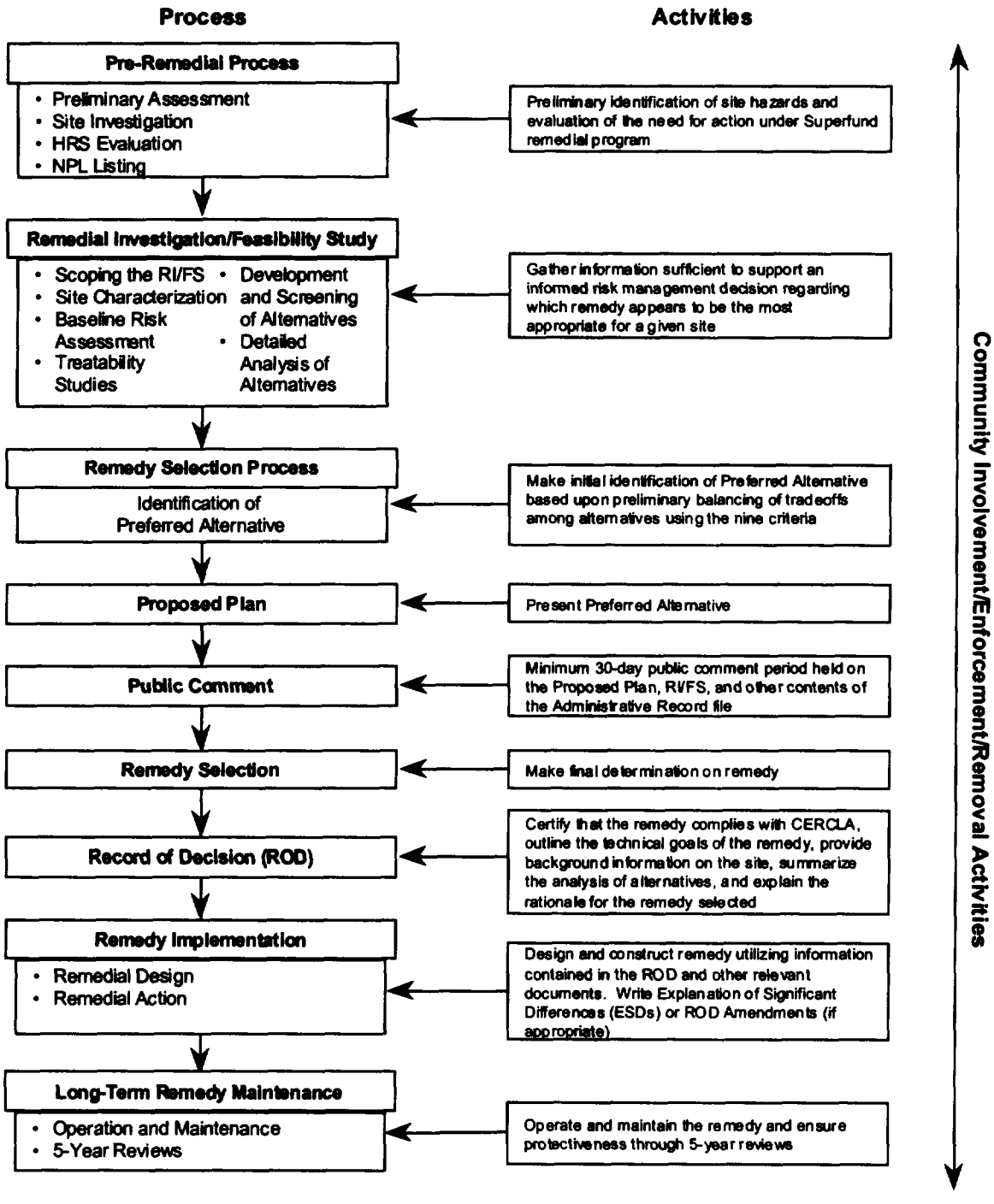
In addition to the emphasis on providing a recommended format to document remedial action decisions, this guidance specifies the roles and responsibilities of government entities in developing and issuing Superfund decision documents, and the role of the public and potentially responsible parties in the remedy selection process. Finally, this guidance addresses the statutory requirement in CERCLA §§117 (c) and (d) to document significant changes made during and after the remedy selection process, as further detailed in NCP §§300.430(f)(3)(ii) and 300.435.

1.2 OVERVIEW OF SUPERFUND REMEDIAL RESPONSE PROCESS

This section describes the relationship between the decision documents addressed in this guidance and the overall Superfund remedial response process. The Superfund remedial response process is shown in Highlight 1-1.

[1] References made to CERCLA, or "the Superfund statute," throughout this document should be interpreted as meaning CERCLA, as amended by SARA. The NCP, or the "Superfund regulations," can be found at Chapter 40, Part 300 in the Code of Federal Regulations (CFR).

Highlight 1-1: Superfund Remedial Response Process



1.2.1 The Pre-Remedial Response Process

Historically, the pre-remedial response process has encompassed the identification, initial investigation, and listing of a site on the National Priorities List (NPL). This process is initiated with the Preliminary Assessment (PA). If the results of the PA indicate that further investigation is warranted, a Site Investigation (SI) is performed. If the SI concludes that further response is warranted, more information is gathered to "score" the site using the Hazard Ranking System (HRS). Those sites that score at or above the HRS cut-off score of 28.50 are eligible for the NPL. Generally, a full Remedial Investigation/Feasibility Study (RI/FS) is commenced shortly after a site is placed on the NPL.

However, with the fully implemented Superfund Accelerated Cleanup Model (SACM), all site assessment and initial investigative activities can take place in a continuous process combining appropriate elements of SIs, RI/FSs, removal assessments, and risk assessments. In this case, a final listing of a site on the NPL may occur after the RI/FS has been started or completed. In addition, response actions can be initiated throughout the site assessment and remedial response process through the use of "removal response authorities" or State-lead voluntary cleanup and Brownfields programs.[2] In some circumstances, threats posed by sites can be fully addressed without ever being placed on the NPL. For more information on SACM, see *Guidance on Implementation of the Superfund Accelerated Cleanup Model (SACM) Under CERCLA and the NCP* (OSWER 9203.1-03, July 7, 1992), and five additional SACM fact sheets (OSWER 9203.1-05I, Volume 1, Numbers 1-5, December 1992).

1.2.2 Lead and Support Agencies in the Superfund Remedial Response Process

At or before the time a site is placed on the NPL, interagency negotiations are initiated to determine which government agency should act as the lead agency and which as support agency in the remedial process. These negotiations may include EPA, States, other Federal agencies (*e.g.*, Department of Defense (DOD), Department of Energy (DOE)), and Indian Nations or Tribes.[3] The State role in the remedial process is discussed in CERCLA §121(f)(1), which provides "for substantial and meaningful involvement of each State in the initiation, development, and selection of remedial response actions to be undertaken in that State." (See the NCP Part 300 Subpart F for regulatory provisions concerning state involvement. See also *Guidance on Lead Determinations for CERCLA Fund-financed Responses*, OSWER 9355.2-02, April 1992.)

The lead agency, which is represented by a Remedial Project Manager (RPM), has the primary responsibility for coordinating a response action. Either EPA, a State environmental agency, or another Federal agency can serve as the lead agency.[4] However, EPA retains final remedy selection authority for all "Fund-financed" actions, and for Federal facility-lead actions taken at NPL sites.[5] EPA also generally has the authority to concur on all enforcement actions taken under CERCLA §§106 and 122. Generally, the lead agency RPM is responsible for overseeing all technical, enforcement, and financial aspects of a remedial response.

The support agency, or agencies, play a review and concurrence role in the remedial process. When EPA acts as the lead agency, the State in which the site is located usually serves as the support agency. When a State is the lead agency, EPA usually serves as the support agency.[6]

[2] For a more complete discussion of removal response authorities, see NCP §300.415.

[3] For the purpose of this guidance document, the term "State" shall include the governing body of an Indian Nation or Tribe (see NCP §300.515(b), CERCLA §126 and Executive Order 13084, dated May 14, 1998), unless otherwise noted.

[4] At some sites, Federal agencies other than EPA act as lead agencies under CERCLA, pursuant to Executive Order 12580 (52 *FR* 2923, January 29, 1987).

[5] The following terms will be used throughout this guidance to designate which government entity serves as the lead agency in the Superfund remedial response process: "EPA-lead," "State-lead," and "Federal facility-lead." In addition, the following terms will be used throughout this guidance to refer to the source of cleanup monies: "Fund-financed" (*i.e.*, cleanup money from the Superfund trust fund), and "enforcement site" or "PRP-lead" (*i.e.*, cleanup money from enforcement action taken by lead agency).

[6] Because a State or Indian Tribe may be either the lead agency or the support agency for most remedial activities, this guidance often makes general reference to "lead" and "support" agency responsibilities, rather than "EPA," "State," or "Tribal" responsibilities. Specific responsibilities of these entities are noted where appropriate.

When EPA and/or a State are involved in remedial action, the lead and support agencies are identified in either a Superfund State Contract (SSC) or a Cooperative Agreement (CA). SSCs and CAs are site-specific agreements that establish Federal and State responsibilities for a CERCLA remedial action. When EPA leads the remedial action, the SSC is used to identify the roles and responsibilities of EPA and the State, and to document assurances by the State that are required under CERCLA. When the State leads the remedial action, the CA is used to identify the roles and responsibilities of the State and EPA, and to document assurances by the State that are required under CERCLA. The CA also provides the mechanism to transfer trust fund (*i.e.*, Superfund) monies to the State for the response activities.[7] In addition, the State and EPA may enter into a Superfund Memorandum of Agreement (SMOA), which is a general, non-site-specific agreement that defines the roles of, and interaction between, EPA and the State for conducting response actions.

A Federal agency other than EPA can also assume the roles and responsibilities of the lead agency. These responsibilities include coordinating and communicating with EPA and the State in their shared role as support agencies. At NPL sites, the division of authority and responsibility between the Federal agency as lead and the support agencies, particularly in preparing the Proposed Plan and the ROD, should be specified in an Interagency Agreement (IAG). IAGs must follow the requirements of CERCLA §120(e). This agreement should be reached by considering the process and activities outlined in this guidance, the CERCLA requirements, and the NCP. At NPL and non-NPL sites, Federal agency response actions are expected to be consistent with this and other EPA guidance, as specified in CERCLA §120(a).[8]

1.2.3 Potentially Responsible Parties

Under CERCLA §104, a person or entity potentially responsible for a release of hazardous substances, pollutants, or contaminants into the environment (*i.e.*, a Potentially Responsible Party (PRP)), may also be allowed to conduct certain response actions in accordance with CERCLA §122, if the lead agency determines that party is qualified and otherwise capable. For a PRP-lead RI/FS response action, either EPA or the State is the lead agency for overseeing the PRP's work and for developing the Proposed Plan and the ROD.[9] The lead agency determines whether the PRP, or the PRP's contractor, is qualified and capable of doing the work. PRPs may participate in the remedy selection process by submitting comments on the Proposed Plan or other information contained in the Administrative Record file during the formal public comment period held before the final selection of a remedy for a site. However, PRPs generally should not be permitted to write Proposed Plans, RODs or any amendments to those documents.

1.2.4 Remedial Investigation/Feasibility Study

At or before the time a site is listed on the NPL, the lead agency or PRP begins an RI/FS.[10] During an RI/FS, the lead agency gathers or oversees the gathering of information to support an informed decision regarding which remedy (if any) is most appropriate for a given site or an operable unit within a site. Interim or early actions can be taken throughout the RI/FS process to initiate risk reduction activities. It is recommended that all parties involved in the development of

[7] All funds committed and obligated to a State in a Cooperative Agreement are tracked with an account number. After the funds have been obligated, payments to the State are made through the Automated Clearing House (ACH) process.

[8] Generally, this guidance applies to other Federal agencies in the same manner and extent that it applies to EPA. If questions arise regarding the application of this guidance to remedial response actions at Federal facility sites, the Federal agency staff should consult their legal counsel as well as EPA. CERCLA requires that EPA concur with remedy selection decisions at Federal facility sites on the NPL. If EPA does not concur, EPA has the authority to select the remedy in lieu of the Federal facility.

[9] For detailed information pertaining to PRP oversight, refer to *Guidance on Oversight of Potentially Responsible Party Remedial Investigations and Feasibility Studies*, Volumes 1 and 2 (EPA 540-G-91-010a and b, July 1991).

[10] An RI/FS can be performed on the site as a whole, or for a particular portion of the site. The NCP defines an operable unit (OU) as a "discrete action that comprises an incremental step toward comprehensively addressing site problems. This discrete portion of a remedial response manages migration, or eliminates or mitigates a release, threat of a release, or pathway of exposure" (NCP §300.5). Hence, an operable unit can be a certain geographic portion of a site or can address an environmental medium at the site (*e.g.*, ground water, soil). Operable units may also be comprehensive but temporary remedies (*e.g.*, temporary caps across a site) that provide interim protection of human health and the environment before final remediation. The cleanup of a site can be divided into a number of operable units, depending on the complexity of the problems associated with the site.

the RI/FS engage in a joint scoping meeting prior to finalization of the RI/FS Work Plan. Increased efficiency and cost savings can be gained through coordination and mutual understanding of project expectations.

Usually, the RI and FS are conducted concurrently in an interactive, iterative manner. The data collected during the RI are used to develop remedial alternatives in the FS, and the alternatives identified in the FS determine the necessity of treatability studies or the collection of additional data in the RI. In general, the RI consists of the following actions:

- Determining the nature and extent of the contamination at the site or operable unit.
- Assessing risks to human health and the environment from this contamination.
- Conducting treatability tests to evaluate the potential performance and cost of the treatment technologies being considered for addressing these risks.

In characterizing the site, the lead agency or PRP identifies the source of contamination, potential routes of migration, and current and potential human and environmental receptors. A baseline risk assessment conducted during the RI estimates what risks the site poses now and would pose in the future if no cleanup action were taken. Thus, it provides the basis for taking action and identifies contaminants and the exposure pathways that need to be addressed by the remedial action. Treatability studies are bench, pilot, or full-scale tests of particular technologies on samples of actual site wastes. Such studies may be conducted to identify which technologies are suitable for addressing the waste to be treated.

A component of this investigation and planning process should be early and continuing consultation with the community. This consultation can elicit useful knowledge about the site (*e.g.*, current and reasonably anticipated future land uses and current and potential beneficial ground-water uses) as well as major public concerns that should be considered.

The FS involves the identification and detailed evaluation of potential remedial alternatives. This process begins with the formulation of viable alternatives, which involves defining remedial action objectives, general response actions, volumes or area of media to be addressed, and potentially applicable technologies. Following a preliminary screening of alternatives, a reasonable number of appropriate alternatives undergoes a detailed analysis using the nine evaluation criteria in the NCP. (For a discussion of this analysis, see Chapters 3 and 6.) The detailed analysis profiles individual alternatives against the criteria and compares them with each other to gauge their relative performance. Each alternative that makes it to this stage of the analysis, with the exception of the required "No Action" alternative, is expected to be protective of human health and the environment and compliant with Applicable or Relevant and Appropriate Requirements (ARARs) (unless a waiver is justified), both threshold requirements under CERCLA.[11]

1.2.5 Proposed Plan

The Preferred Alternative for a site is presented to the public in a Proposed Plan. The Proposed Plan briefly summarizes the alternatives studied in the detailed analysis phase of the RI/FS, highlighting the key factors that led to identifying the Preferred Alternative. The Proposed Plan, as well as the RI/FS and the other information that forms the basis for the lead agency's response selection, is made available for public comment in the Administrative Record file. The opportunity for a public meeting must also be provided at this stage.

1.2.6 Record of Decision

Following receipt of public comments and any final comments from the support agency, the lead agency selects and documents the remedy selection decision in a ROD. The ROD documents the remedial action plan for a site or operable unit and serves the following three basic functions:

- It certifies that the remedy selection process was carried out in accordance with CERCLA and, to the extent practicable, with the NCP.[12]

[11] ARARs include any Federal or State standards, requirements, criteria, or limitations that are determined to be legally applicable or relevant and appropriate to a CERCLA site or action.

[12] Section 121(a) of CERCLA provides that remedial actions should be carried out in accordance with §121 "and, to the extent practicable, the National Contingency Plan."

- It describes the technical parameters of the remedy, specifying the methods selected to protect human health and the environment including treatment, engineering, and institutional control components, as well as cleanup levels.

- It provides the public with a consolidated summary of information about the site and the chosen remedy, including the rationale behind the selection.

While the ROD should provide a comprehensive description of site conditions, the scope of the action, the Selected Remedy, cleanup levels, and the reason for selecting the remedy, it is only one part of the Administrative Record file, which contains the full details of site characterization, alternatives evaluation, and remedy selection.

1.2.7 Remedial Design

The ROD provides the framework for the transition into the next phase of the remedial process. Remedial Design (RD) is an engineering phase during which additional technical information and data identified are incorporated into technical drawings and specifications developed for the subsequent remedial action. These specifications are based upon the detailed description of the Selected Remedy and the cleanup criteria provided in the ROD.

1.2.8 Remedial Action

After completion of the RD, the Remedial Action (RA) begins. During RA, the implementation phase of site cleanup occurs. Upon completion of the remedial action for an operable unit, a remedial action report is prepared. Upon completion of remedial construction activities for the final operable unit at the site, a Preliminary Site Closeout Report (PCOR) is prepared which documents NPL site construction completion (pursuant to *Close Out Procedures for National Priority List Sites* (EPA 540-R-95-062, August 1995, update anticipated in FY99).

When all phases of remedial activity at a site have been completed and no further response is appropriate, the site may be eligible for deletion from, or recategorization on, the NPL. Completed cleanup results documented in a Remedial Action Report or Final Closeout Report (as detailed in the above referenced guidance) should be compared with the terms in the ROD to determine whether remedial action objectives and cleanup levels have been attained so that the site may be further evaluated for deletion from the NPL, pursuant to the requirements of NCP §300.425(e). CERCLA requires a review to be conducted at least every five years at sites where an action has been selected that results in hazardous substances, pollutants, or contaminants remaining at the site above levels that allow for unlimited use and unrestricted exposure (see Highlight 6-36 for more information on five year reviews). Changes to the remedy selected in the ROD that occur during the RD/RA process must be described in an Explanation of Significant Differences (ESD) or ROD Amendment pursuant to NCP §§300.435(c)(2) and 300.825(a).

1.3 OUTLINE OF THIS GUIDANCE

This guidance is organized as follows.

- Chapter 2 summarizes the roles and responsibilities of lead and support agencies in developing the Proposed Plan. It also highlights the requirements for the newspaper notification that announces the availability of the Proposed Plan and discusses the public comment process.

- Chapter 3 presents the purpose and regulatory requirements of the Proposed Plan. This chapter also contains a detailed checklist outlining the components of a Proposed Plan. This checklist may be used as a worksheet when writing or reviewing a Proposed Plan.

- Chapter 4 describes the general framework for categorizing minor and significant changes made to the Preferred Alternative before issuance of the ROD and discusses documentation and public information activities that may be necessary as a result of these changes.

- Chapter 5 summarizes the roles and responsibilities of lead and support agencies in developing the ROD. It also outlines how to issue the notice of ROD availability.

- Chapter 6 presents the purposed and regulatory requirements for the ROD, as well as a recommended format which discusses key elements and summary tables for each section. This chapter also contains a detailed checklist outlining the components of a ROD. This checklist may be used as a worksheet when writing or reviewing a ROD.

- Chapter 7 discusses the procedures to follow when changes occur to the Selected Remedy after a ROD is signed. A sample outline and checklist is presented for Explanations of Significant Differences (ESDs) and ROD Amendments.

- Chapter 8 presents the recommended ROD formats for three specific types of remedial action decisions: no action, interim action, and contingency remedy decisions.

- Chapter 9 presents information on documenting the following remedy selection situations: lead (Pb), presumptive remedies, and ground water.

- Appendix A provides an example Proposed Plan that satisfies the requirements and suggestions described in this guidance.

- Appendix B provides additional information on addressing the following ground-water issues: phased approach, non-aqueous phase liquids (NAPLs), deferral of design, and monitored natural attenuation.

- Appendix C contains a fact sheet and a transmittal memorandum which discuss consultation procedures for Superfund response decisions.

- Appendix D outlines the procedures for submitting final remedy selection decision documents to the Superfund Document Center at EPA Headquarters.

- Appendix E lists additional sources of information on the remedy selection process and other stages of the remedial process that might be helpful to a remedy selection decision document writer.

2.0 PROCESS FOR DEVELOPING THE PROPOSED PLAN

2.1 OVERVIEW

This chapter summarizes the roles and responsibilities of the lead and support agencies in developing the Proposed Plan. Personnel in the lead and support agencies should begin discussions on the alternatives analyzed in the FS as early as possible and attempt to reach an agreement on identifying a Preferred Alternative. These early discussions should help prevent delays in the later stages of the remedy selection process. PRPs conducting the RI/FS should identify to the lead agency which alternatives have been considered and screened from further consideration before the detailed analysis. The remaining alternatives should be analyzed in detail.

The results of this analysis provide the basis for the lead agency to identify a Preferred Alternative. Throughout the RI/FS process the lead agency should keep the community and others well-informed of site activities through meetings, information bulletins, and by regularly updating the Administrative Record file. The lead agency should also actively seek input from the community on the remedial alternatives being considered.

The general steps in preparing the Proposed Plan for public comment are summarized in Highlight 2-1. The sequence in which these steps are taken may vary somewhat among EPA Regional Offices and States.

The lead agency should begin drafting the Proposed Plan upon completion of the RI/FS Report (in some circumstances, a draft can be developed as the RI/FS is being finalized). If a PRP prepares the RI/FS, then the Proposed Plan should be drafted by the lead agency after the lead agency approves the RI/FS. The RI/FS Report should be sent to the support agency as soon as it is available, but no later than when the draft Proposed Plan is transmitted to the support agency for review and comment.

A Preferred Alternative is identified tentatively on the basis of the RI/FS Report and ongoing discussions between the lead and support agencies and the affected community and PRPs.[1] A formal briefing on the RI/FS and the Preferred Alternative should be made to lead agency management. After this meeting, a draft Proposed Plan is written and submitted to the support agency and lead agency management for review and comment.

The lead agency should prepare the final Proposed Plan taking into consideration the comments from the support agency and based on the results of the internal program and management review process. This final version should include either a summary of the support agency's agreement with the Plan or its dissenting comments.[2] Finally, the notice announcing the availability of the Proposed Plan, along with a brief abstract of its content, must be published in a major local newspaper. The Proposed Plan and any supporting analysis and information (including the RI/FS) must be made available in the Administrative Record file.

2.2 ROLE OF LEAD AND SUPPORT AGENCIES

For the remedy selection process to succeed, lead and support agencies should interact throughout the entire RI/FS and Proposed Plan process. The goal of this continued interaction is to reach agreement on the Proposed Plan and the RI/FS Report before the public comment period starts.

2.2.1 *Designation of Roles and Responsibilities*

EPA and the State play specific roles throughout the remedial process. These roles should be defined in the SSC, SMOA, or CA.[3] State participation specifi-

[1] The Preferred Alternative must be identified by the lead agency itself. A technical support contractor hired to assist a government entity in performing its duties or a PRP can recommend, but can not identify, the Preferred Alternative.

[2] If the State is the lead agency and EPA does not approve the Proposed Plan, then the State may not issue the Plan unless the proposed action is a non-Fund financed State-lead enforcement action. (See NCP §300.515(e)(1) and Section 2.3 of this chapter for more detailed information.) If a Federal facility is the lead agency and EPA does not approve the Proposed Plan, then the Federal facility may not issue the Plan unless the proposed action is for a non-NPL site at the Federal facility.

[3] The SMOA is a non-binding agreement that outlines cooperative efforts between States and EPA Regions and defines the roles and responsibilities of each party in the conduct of a Superfund program in a State. For more information, see NCP §300.505 and *Interim Final Guidance on Preparing a Superfund Memorandum of Agreement (SMOA)* (OSWER 9375.0-01, May 1989, or its revised edition). The CA is a legal instrument between EPA and the State in which EPA may transfer money to the State to conduct response activities.

Highlight 2-1: Preparation of The Proposed Plan by the Lead Agency

cally during the RI/FS and Proposed Plan process is important to the successful selection of the remedy and completion of the remedial process. First, the State must be given the opportunity to concur on the ROD; second, for Fund-financed remedial actions, certain State assurances including those for cost share and Operations and Maintenance (O&M) are required to conduct the RA. The SSC or CA should designate the lead and support agency for conducting the RI/FS, developing the Proposed Plan, and drafting the ROD. The SMOA, if applicable, should describe the general procedures for oversight and interaction between EPA and the State.

At Federal facility sites on the NPL, designation and coordination of roles and responsibilities among EPA, the State, and the lead Federal agency are also very important for the successful completion of the remedial process. At such sites, these roles are defined in an IAG. Where EPA may be involved at Federal facility sites not on the NPL, these roles may be established by way of memoranda of understanding (MOUs), letter agreements, etc. Generally, at Federal facility sites, the EPA and the State are co-regulators and the Federal agency which owns and/or operates the site is the lead agency.

2.2.2 Lead and Support Agency Responsibilities

NCP §300.430(f)(3)(i) requires the lead agency to do the following after preparation of the Proposed Plan and review by the support agency:

- Publish a notice of availability and brief analysis of the Proposed Plan in a major local newspaper.
- Make the Proposed Plan and supporting analysis and information available in the Administrative Record file.
- Provide a reasonable opportunity, not less than 30 calendar days, for submission of written and oral comments on the Proposed Plan and the material contained in the Administrative Record file.
- Provide the opportunity for a public meeting to be held during the public comment period.
- Keep a transcript of the public meeting held during the public comment period and make such transcript available to the public.
- Prepare a written summary of significant comments, criticisms, and new relevant information submitted during the public comment period and the lead agency response to each issue. This Responsiveness Summary must be made available with the ROD.

NCP §300.515 discusses the requirements for State involvement in the preparation and publication of the Proposed Plan.

The role of other program offices within EPA and State agencies is to provide specific comments on the alternatives analyzed in the RI/FS Report. EPA and the State should establish the appropriate procedures and time frames for these reviews. Other program offices should review the RI/FS Report at appropriate times during the process to ensure that alternatives in the detailed analysis phase of the RI/FS Report comply with substantive requirements of other laws that qualify as ARARs. For EPA, this may involve review by program offices with responsibility for implementing the Clean Water Act (CWA), Resource Conservation and Recovery Act (RCRA), Clean Air Act (CAA) and Toxic Substances Control Act (TSCA) programs. If a draft Proposed Plan is available when the RI/FS Report is ready to be circulated, it should be circulated at the same time.

2.2.3 Management Review of Proposed Plan

The lead and support agencies should determine the appropriate level of managerial review for the draft Proposed Plan and, as appropriate, include this in the SMOA, SSC, or CA. The Regional Administrator and State Director (or their appropriate designees) should be briefed on the contents of both the RI/FS Report and Proposed Plan, as well as on any unresolved or potentially controversial issues, by their respective staffs before these documents are released to the public.

All draft Proposed Plans should be sent to the appropriate EPA headquarters regional coordinator for review pursuant to *Focus Areas for Headquarters OERR Support for Regional Decision Making* (OSWER 9200.1-17,

May 1996). Some remedy selection decisions will also be eligible for consultation with the National Remedy Review Board or another Cross-Regional review group. See Appendix C for a more complete discussion of Proposed Plan consultation procedures. For more information on the National Remedy Review Board, see http://www.epa.gov/superfund/ programs/nrrb/ index.htm.

2.2.4 Support Agency Comment Period

The support agency's comment period presents an important opportunity for the lead and support agencies to reach agreement on the Preferred Alternative.[4] The comment period begins when the support agency receives the Proposed Plan from the lead agency and lasts 5 to 10 working days. If a different review period is established in the SMOA, it should be followed. In the absence of a SMOA, the support agency has a minimum of 5 working days and a maximum of 10 working days to comment on the Proposed Plan (NCP §300.515(h)(3)).[5]

During the review period, the support agency should provide written comments on the Preferred Alternative and other components of the Proposed Plan. These comments should indicate one of the following:

- Agreement, with or without comments.
- Disagreement, with or without comments.
- No comment on the Proposed Plan at this time.

When the State is the support agency, it has the option of submitting its comments at the end of the public comment period.

EPA must respond to State comments on waivers from or disagreements about State ARARs, as well as on the Preferred Alternative, when making the RI/FS report and Proposed Plan available for public comment (NCP §300.515(d)(4)). The Proposed Plan must include a statement that the lead and support agencies have reached agreement, or where this is not the case, a statement explaining the concerns of the support agency with the lead agency's Proposed Plan (NCP §300.515(e)(1)). These comments and the lead agency's formal response to these comments must be included, in their entirety, in the Administrative Record file.

2.3 PROCEDURES FOR RESOLVING DISPUTES

If a dispute occurs between the lead and support agencies during any phase of the remedial process, the staffs of the agencies should attempt a timely resolution of the disputed issue. If staff resolution is not possible, the issue should be brought promptly to management's attention for resolution.[6]

The lead and support agencies should use the dispute resolution process specified in the SMOA or CA when appropriate. If other Federal agencies besides EPA are involved, the dispute resolution process specified in the IAG should be followed. Alternatively, the lead and support agencies could consider using the dispute resolution process recommended in the NCP Preamble to subpart F (55 *FR* 8781). The section entitled "State Involvement in Hazardous Substance Response" outlines a process that EPA Regional Offices and States should use to resolve disputes that arise during the RI/FS and remedy selection process. This approach encourages the lead and support agencies' RPMs to resolve any disputes promptly. If this cannot be accomplished, the dispute could be referred to their supervisors for further EPA/State consultation. This supervisory referral and resolution process should continue, if necessary, to the level of Director of the State agency and the Regional Administrator, respectively. If agreement still cannot be reached, the dispute should be referred to the Assistant Administrator of OSWER, who serves as final arbiter on remedy selection issues.

[4] For Fund-financed projects, EPA must approve the Proposed Plan even if the State is the lead agency (NCP §300.515(e)(1)). For State-lead, non-Fund financed enforcement sites where the State is using their own authorities rather than CERCLA, no EPA concurrence is required.

[5] The draft RI/FS Report could be given to the support agency before the Proposed Plan is ready for review. The review period for the draft RI/FS Report should last at least 15 working days, unless a different time period is established in the SMOA or CA or between the lead and support agencies. In the absence of a SMOA, the support agency has a minimum of 10 working days and a maximum of 15 working days to comment on the RI/FS (NCP §300.515(h)(3)).

[6] Potential EPA Regional and Headquarters resources to access neutral mediators should be explored, as appropriate.

Regardless of the process used, the result should be an equitable resolution of outstanding issues. There may be instances, however, in which a final resolution cannot be achieved. If this should occur, two alternatives exist for continuing effective action. First, if EPA is the lead agency (pursuant to CERCLA §§104, 106, or 122), the Region should use its discretion as to whether to proceed with publication of the Proposed Plan. Second, if the State is the lead agency (pursuant to §104), EPA must approve the Proposed Plan before it may be issued (NCP §300.515(e)(1)). In some cases, EPA could elect to become the lead agency for the Proposed Plan, public participation activities, and the ROD. (This applies only to Fund-financed, State-lead projects.) However, mutual acceptance of the Preferred Alternative (and, ultimately, of the selected remedy) by both EPA and the State is an important goal in order to effect timely cleanup at the site. In addition, State involvement during the RI/FS and Proposed Plan process is important to the successful selection of the remedy and completion of the remedial action.

2.4 ROLE OF OTHER FEDERAL AGENCIES

Executive Order 12580 (52 *FR* 2923 January 29, 1987) delegates the authority for carrying out the requirements of CERCLA §§117(a) and (c) to Federal agencies for those Federal facilities under their jurisdiction, custody, or control. A Federal agency, therefore, has the responsibility to issue the Proposed Plan. At a Federal facility on the NPL, the IAGs between a Federal agency, EPA, and, in many cases, the State, should establish the responsibilities for each party in preparing the Proposed Plan for Federal facility sites. Where the Federal agency is the lead agency, the responsibilities for preparing the Proposed Plan include those lead agency responsibilities specified in Chapters 2 and 3 of this guidance.

2.5 ROLE OF POTENTIALLY RESPONSIBLE PARTIES

In accordance with CERCLA §§104 and 122, EPA can provide PRPs with the opportunity to conduct the required response actions (*i.e.*, the RI/FS, remedial design, and remedial action). If the PRPs conduct the RI/FS (including the risk assessment), either EPA or the State will become the lead governmental agency for general oversight of the RI/FS. EPA or the State should prepare the Proposed Plan and the ROD, even if the PRP conducts the RI/FS (*i.e.*, the lead agency identifies the Preferred Alternative (see footnote #1 in this chapter)). At those sites for which the PRP conducts the RI/FS, the alternative preferred by the PRP should not be indicated in the RI/FS Report.[7]

PRPs may also participate in the remedy selection process by commenting on the Proposed Plan and on other publicly available information in the Administrative Record file during the formal public comment period. If comments are submitted by PRPs and members of the public prior to the formal public comment period, the lead agency should advise those parties that their concerns may not be addressed until the end of the formal comment period.

2.6 PUBLIC PARTICIPATION

The regulatory requirements for public participation in association with the Proposed Plan are listed in Section 2.2.2. Additional information concerning newspaper notification and the public comment period is provided below.

2.6.1 Newspaper Notification

The announcement of the availability of the Proposed Plan and Administrative Record file should be made at least two weeks prior to the beginning of the public comment period so that the public has sufficient time to obtain and read the Proposed Plan. The lead agency's newspaper notification must include a brief abstract of the Proposed Plan, which describes the alternatives analyzed and identifies the Preferred Alternative (NCP §300.430(f)(3)(i)(A)). The notice should be published in a widely read section of the newspaper. The notification should be designed to attract attention and engage the reader and should be written in simple, non-technical language. Key elements of the notification are summarized below. Highlight 2-3 provides a sample newspaper notification.

The newspaper notification should consist of the following elements:

[7] For more information, see *Guidance on Oversight of Potentially Responsible Party Remedial Investigations and Feasibility Studies*, Volumes 1 and 2 (EPA 540-G-91-010a and b, July 1991).

- *Site name and location.* Gives proper site name and location.

- *Date and location of a public meeting.* If a public meeting is scheduled, it should be held at a reasonable time at or near the site. If one has not been scheduled, the notice should inform the public of the opportunity for a public meeting.

- *Identification of lead and support agencies.* Identifies which entities (*i.e.*, EPA, State agency, or other Federal agency) are serving as lead and support agencies.

- *Alternatives evaluated in the detailed analysis.* Lists remedial alternatives evaluated in the detailed analysis phase of the FS.

- *Identification of Preferred Alternative.* States briefly the major components of the Preferred Alternative.

- *Request for public comments.* The notice should emphasize that the lead agency is soliciting public comment on all alternatives evaluated in the detailed analysis phase of the FS, as well as on the Preferred Alternative. The request should include a clear statement that the Preferred Alternative is only a preliminary determination and that the Preferred Alternative could be modified since any of the other options presented could be selected as the remedy based upon public comment, new information, or a reevaluation of existing information. The readers should be referred to the RI/FS Report and other contents of the Administrative Record file for further information on all remedial alternatives considered.

- *Public participation opportunities.* The notice informs the public of its role in the remedy selection process and provides the following:

  - Location of information repositories and Administrative Record file.

  - Methods by which the public may submit oral and written comments, including a contact person.

  - Dates of the public comment period.

  - Contact person for a Community Advisory Group (CAG), or Technical Advisory Grant (TAG) recipient, if applicable.

For further information on writing newspaper notification, please see EPA's Quick Reference Fact Sheet, *Publishing Effective Public Notices* (OSWER 9378.0FS, April 1997).

Highlight 2-2: Tips for Writing an Effective Public Notice

- Publish the notice about 10 days before the event. If budgets permit, publish the notice again 5 days before and 1 day before the event.
- Choose a location in the paper that is well-read (sports, TV, or local news section).
- Be specific about what the reader should do and how to do it.
- Keep the notice as short as possible and use simple, non-technical words.
- Remember, the appearance of the notice, as well as the message, is important. Make it visually appealing.

2.6.2 Public Comment Period

This section provides guidance on the procedures the lead agency should follow to satisfy the public participation requirements in NCP §300.430(f)(3).

The lead agency is charged with making the relevant documents, such as the Proposed Plan and the RI/FS Report, available to the public at the time the newspaper notification is made.[8] In addition, the lead agency must ensure that any information that forms the

[8] In addition to being published in the newspaper, the notice of the Proposed Plan should be sent directly to the citizens and PRPs via the community relations or enforcement mailing list for the site. (Although not a statutory or regulatory requirement, this may allow timely participation from citizens and PRPs outside the circulation area of the local newspaper.)

basis for selecting the response action is included as part of the Administrative Record file and is available to the public during the public comment period.

CERCLA §117(a)(2) also requires the lead agency to provide the public with a reasonable opportunity to submit written and oral comments on the Proposed Plan. NCP §300.430(f)(3)(i) requires the lead agency to allow the public a minimum of 30 days to comment on the information contained in the RI/FS Report and Proposed Plan (including any proposed waivers relating to ARARs). In addition, the lead agency must extend the comment period by a minimum of 30 additional days, upon timely request.

The lead agency must provide an opportunity for a public meeting to be held at or near the site during the comment period. A transcript of the meeting conducted during the public comment period must be made available to the public and should be included as part of the Administrative Record file (pursuant to NCP §300.430(f)(3)(i)(E)). The lead agency should also place the transcript in the information repository. Although the lead agency may respond to oral or written comments received during the RI/FS process and before the public comment period, it has no legal obligation to do so. To ensure that their comments are addressed, commenters may wish to resubmit their comments during the formal public comment period as well.

Further guidance on the public comment period and the lead agency's responsibilities can be found in *Incorporating Citizen Concerns into Superfund Decision-Making* (OSWER 9230.0-18, January 1991). For more information specific to procedures at Federal facility sites, refer to the *Restoration Advisory Board Implementation Guidelines* (U.S. EPA and DOD, September 27, 1994) and *Site-Specific Advisory Board Guidance* (Office of Environmental Management, DOE, October 1995).

Highlight 2-3: Sample Newspaper Notification of Availability of Proposed Plan and Public Meeting

EPA Proposes Cleanup Plan for the EIO Industrial Site

Proposed Plan Nameless, TN

March 1, 1999

The U.S. Environmental Protection Agency (EPA) and the Tennessee Department of Environment and Conservation (TDEC) will hold a Public Meeting to discuss the Remedial Investigation/Feasibility Study (RI/FS) Report and Proposed Plan for the cleanup of the EIO Industrial Site, Nameless, TN. The RI/FS Report discusses the risks posed by the site and presents an evaluation of cleanup options. The Proposed Plan identifies a preferred cleanup alternative for the public to comment on along with the other options considered.

EPA and TDEC evaluated the following options for addressing the contaminated soil and ground water at the site:

Soil
- No action
- In-situ soil vapor extraction and solidification, and capping
- Excavation, on-site thermal destruction, solidification, and capping

Ground Water
- No action
- Pump and treat by carbon adsorption and discharge to XYZ River
- Pump and treat by carbon adsorption followed by reinjection

Based on available information, the preferred option proposed for public comment at this time is to treat the contaminated soil at the site through in-situ vapor extraction, to solidify the soils, disposing them on site, and to pump and treat the ground water by carbon adsorption and discharge it to the XYZ River. Although this is the Preferred Alternative at the present time, EPA and TDEC welcome the public's comments on all of the alternatives listed above. The formal comment period ends on March 30. EPA and TDEC will choose the final remedy after the comment period ends and may select any one of the options after taking public comments into account.

Copies of the RI/FS and Proposed Plan along with the rest of the Administrative Record file are available at:

Nameless Public Library
619 South 20th Street
Nameless, TN 00000
(101)999-1099
Hours: 9 a.m. to 9 p.m.
Monday through Saturday

U.S. EPA Records Center, Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303-3104
(555)555-5555
Hours: 8:30 a.m. to 5:00 p.m.
Monday through Friday

Public Meeting
March 13, 1999 at 7:30 p.m.
Community Hall
237 Appleton Street, Nameless, TN.

For further information or to submit written comments, please contact:

Joshua Doe
Community Relations Coordinator
U.S. Environmental Protection Agency
61 Forsyth Street, S.W.
Atlanta, GA 30303-3104
(555) 555-5555

3.0 WRITING THE PROPOSED PLAN

This chapter presents a recommended structure for the Proposed Plan and is accompanied by an outline and checklist, which can be found at the end of the chapter. Appendix A contains a sample Proposed Plan which is meant to illustrate the appropriate level of detail for the recommended format presented in this chapter.

3.1 PURPOSE OF THE PROPOSED PLAN

The Proposed Plan is a document used to facilitate public involvement in the remedy selection process. The document presents the lead agency's preliminary recommendation concerning how best to address contamination at the site, presents alternatives that were evaluated, and explains the reasons the lead agency recommends the Preferred Alternative.

The lead agency solicits public comment on the Proposed Plan including all of the alternatives considered in the detailed analysis phase of the RI/FS, because the lead and support agencies may select a remedy other than the Preferred Alternative based on public comment. The final decision regarding the selected remedy is documented in the ROD after the lead agency has considered all comments from both the support agency and the public.

3.2 REGULATORY REQUIREMENTS FOR THE CONTENT OF THE PROPOSED PLAN

In the first step of the remedy selection process, the NCP directs the lead agency to identify a Preferred Alternative and present that alternative to the public in a Proposed Plan. The Proposed Plan must briefly describe the remedial alternatives analyzed, propose a preferred remedial action alternative, and summarize the information relied upon to select the Preferred Alternative (NCP §300.430(f)(2)). This section of the NCP also states that, at a minimum, the Proposed Plan must:

- Provide a brief summary description of the remedial alternatives evaluated in the detailed analysis;
- Identify and provide a discussion of the rationale that supports the Preferred Alternative;
- Provide a summary of any formal comments received from the support agency; and
- Provide a summary explanation of any proposed ARAR waiver.

In addition, the NCP requires that EPA must respond to State comments on waivers from, or disagreements about, State ARARs, as well as the Preferred Alternative, when making the Proposed Plan available for public comment (NCP §300.515(d)(4)).

3.3 SECTION-BY-SECTION DESCRIPTION OF THE PROPOSED PLAN

Highlight 3-1 shows the major sections of the Proposed Plan. Each section is described in a more complete manner below.

3.3.1 Introduction

The introduction should state that the Proposed Plan is a document that the lead agency is required to issue to fulfill public participation requirements under CERCLA and the NCP. The primary purpose of the introduction is to inform and solicit the views of citizens on the Preferred Alternative.

This section should include the site name and location and identify the lead and support agencies for the remedial action. It should also state that the Proposed Plan is a document that the lead agency is required to issue to fulfill the requirements of CERCLA §117(a) and NCP §300.430(f)(2).

The public should be informed of the function of the Proposed Plan in the remedy selection process; specifically, its purposes are the following:

- Provide basic background information.
- Identify the Preferred Alternative for remedial action at a site or operable unit and explain the reasons for the preference.

- Describe the other remedial options considered.
- Solicit public review of and comment on all alternatives described.
- Provide information on how the public can be involved in the remedy selection process.

Other items that should be covered in the introduction include the following:

Highlight 3-1: Major Sections of the Proposed Plan

A. **Introduction** - Identifies site and describes the public participation process

B. **Site Background** - Provides facts about the site which provide the context for the subsequent sections of the Proposed Plan

C. **Site Characteristics** - Describes nature and extent of site contamination.

D. **Scope and Role** - Describes how the operable unit or response action fits into the overall site strategy

E. **Summary of Site Risks** - Summarizes the results of the baseline risk assessment, and the land use and ground-water use assumptions used in the analysis

F. **Remedial Action Objectives** - Describes what the proposed site cleanup is expected to accomplish

G. **Summary of Alternatives** - Describes the options for attaining the identified remedial action objectives

H. **Evaluation of Alternatives** - Explains the rationale for selecting the Preferred Alternative

I. **Preferred Alternative** - Describes the Preferred Alternative, summarizes support agency comments, and affirms that it is expected to fulfill statutory and regulatory requirements

J. **Community Participation** - Provides information on how the public can provide input to the remedy selection process

- Relationship of RI/FS to the Proposed Plan. A clear statement should be made that the Proposed Plan highlights key information from the RI/FS Report. The Plan should refer the reader to the RI/FS Report and Administrative Record file for more information regarding the remedial action.[1]
- Importance to the remedy selection process of public input on *all* alternatives and on the rationale for the Preferred Alternative. New information or arguments the lead agency learns during the public comment period could result in the selection of a final remedial action that differs from the Preferred Alternative.

3.3.2 Site Background

This section provides the foundation for the subsequent sections of the Proposed Plan. Answers to the following questions should help provide a complete background description:

- *What media are contaminated at the site?* Describe the media contaminated *(e.g.*, soil, air, ground or surface water).
- *What caused the current contamination at the site?* Provide a brief history of waste generation or disposal that led to current contamination problems.
- *Who has investigated site contamination, and with what results?* Describe history of Federal, State, and local site investigations.
- *What has been done to remediate the contamination?* Describe any previous response actions at the site (*e.g.*, removal, voluntary cleanup).
- *Are the parties responsible for site contamination involved in the cleanup?* Detail enforcement activities, such as the results of PRP searches or notices sent to PRPs, and whether they have conducted any of the studies upon which the Proposed Plan is based.

[1] Subpart I of the revised National Contingency Plan (40 CFR 300.800, *et seq.*) and the *Final Guidance on Administrative Records for Selection of CERCLA Response Actions* (OSWER 9833.3A-1, December 1990) provide detailed information on developing, maintaining, and providing access to the Administrative Record file for the selection of the CERCLA response action.

- *What previous efforts have been made by the lead agency to involve the public in matters related to site cleanup?* Describe major public participation activities, prior to the issuance of the Proposed Plan (*e.g.*, special community outreach related to environmental justice concerns, or identification of reasonably anticipated future land and groundwater uses).

3.3.3 Site Characteristics

- *What are the physical characteristics of the site?* Provide a brief description of site characteristics to help the public understand why the alternatives proposed are appropriate.

- *What roads, buildings, and land uses are present on the site?* Provide a site map containing this information.

- *What geographical or topographical factors had a major impact on remedy selection?* Examples include: current or potential drinking water sources affected or threatened by site contamination, wetlands on the site, or areas of major historical importance.

- *How much and what type of contamination is present?* Describe the nature and extent of contamination.

- *What are the source materials on the site that constitute principal threats?* Identify the location, volume and nature of mobile/high-toxicity/high-concentration source material (see Section 6.3.11)

3.3.4 Scope and Role of Operable Unit or Response Action

This section of the Proposed Plan should summarize the lead agency's overall strategy for remediating the site and describe how the action being considered in the Proposed Plan fits into that overall strategy.

If the response is being carried out in operable units, the purpose of each operable unit and their planned sequence should be described. Any prior or planned removal actions and interim or early remedial actions should also be discussed. Finally, how the operable unit or response action addresses source materials constituting principal threats should be identified as well. An example of this discussion follows:

> *"This is the second of three planned operable units for the site. The first operable unit provided the community with an alternate water supply to prevent ingestion of contaminated ground water. This second operable unit addresses remediation of the source materials, which include contaminated soil and sludges from former lagoon areas. These source materials constitute principal threat wastes at the site. The third and final operable unit will address the contaminated ground water."*

3.3.5 Summary of Site Risks

The human health and ecological risks posed by the site determine whether or not a remedial action is warranted. This section of the Proposed Plan should briefly summarize information in the baseline risk assessment to describe the nature and extent of the risks posed to human health and the environment by the contamination at the site. This discussion should be broken into the following two subsections: (1) human health risks, and (2) ecological risks.

Technical terms or concepts used in the baseline risk assessment that are likely to be unfamiliar to the public should be explained or defined if used in the Proposed Plan (*e.g.*, any numeric risk representations, such as cancer risks and hazard quotients, need to be accompanied by a "plain-English" explanation). Basic explanations of these concepts are provided in the examples contained in Section 6.3.7.

Generally, the risk summary in the Proposed Plan should be a narrative description rather than a tabular presentation. Risk tables are more appropriate for the level of detail needed in a ROD than for the Proposed Plan. The length of most risk descriptions in the Proposed Plan should be limited to no more than two or three paragraphs. For sites that are complex or for sites where there is heightened public interest, more risk assessment information may be needed in the Proposed Plan. A risk assessor should be consulted if a streamlined risk summary table is presented in the Proposed Plan to ensure that it is consistent with the summary tables in the risk assessment. See Section 6.3.7 for examples of site risk summary tables, recommended for a ROD, that could be used in an expanded risk section in the Proposed Plan.

Key information from the baseline risk assessment that should be covered in the Proposed Plan includes the following:

- *Major chemical(s) of concern (COCs)* in each medium. For an explanation of the term COC, see Chapter 6, footnote #7.

- *Land and ground-water use assumptions* (*i.e.*, the current and reasonably anticipated future land uses and the current and potential beneficial ground-water uses, and the basis for these assumptions (*e.g.*, community input)).

- *Potentially exposed populations in current and future risk scenarios* (*e.g.*, worker currently on-site, adults or children living on-site in the future).

- *Exposure pathways affecting each population group*, assuming reasonably anticipated future land and water uses (*e.g.*, volatilization of contaminants from soils, direct ingestion of potable ground water or surface water). Information about land and water use assumptions should help the public understand why certain exposure pathways were examined.

- *Summary of the human health risk characterization*, which should include the estimated carcinogenic and non-carcinogenic risks associated with exposure pathways for chemicals of concern that are driving the need to implement the Preferred Alternative.

- *Summary of the ecological risk characterization*, including: 1) the basis of environmental risks associated with specific media; 2) how these risks were determined (*e.g.*, based on the outcome of the ecological risk assessment and aquatic field studies, the polycyclic aromatic hydrocarbons in the sediments pose unacceptable risks to aquatic receptors); and 3) the potential risks to endangered species.

The Proposed Plan should clearly link the site risks to the basis for action (*e.g.*, the need to address contaminated soil which is: (1) a threat to residents who come into contact with it, and (2) a continuing source of ground-water contamination). For an explanation of the term "basis for action," see Chapter 6, footnote #11.

The risk section of the Proposed Plan should conclude with the standard statement in Highlight 3-2 (unless a "No Action" alternative is being proposed).

3.3.6 Remedial Action Objectives

The remedial action objectives (RAOs) describe what the proposed site cleanup is expected to accomplish. A brief description of the RAOs proposed for the site should follow the "Summary of Site Risks" section. RAOs may vary for different portions of the site (*e.g.*, returning ground water to drinking water use, and reducing contaminant concentrations in soil to below X ppm so that it is safe for the reasonably anticipated future land use at the site). Preliminary remediation goals (PRGs) (*i.e.*, proposed cleanup levels), and their basis

Highlight 3-2: Standard Language Explaining Basis for Taking Action

It is the lead agency's current judgment that the Preferred Alternative identified in this Proposed Plan, or one of the other active measures considered in the Proposed Plan, is necessary to protect public health or welfare or the environment from actual or threatened releases of hazardous substances into the environment.

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If the site is contaminated with pollutants or contaminants (in accordance with the definitions contained in NCP §300.5), then the following standard language should be used:

It is the lead agency's current judgment that the Preferred Alternative identified in this Proposed Plan, or one of the other active measures considered in the Proposed Plan, is necessary to protect public health or welfare or the environment from actual or threatened releases of pollutants or contaminants from this site which may present an imminent and substantial endangerment to public health or welfare."

****

If the response action will address both hazardous substances and pollutants or contaminants, a combination of the two examples of standard language may be necessary.

Highlight 3-3: Tips on Writing Summary of Site Risks

- Define terms and concepts used in the risk discussion that are not likely to be understood by the public.
- Present the risk discussion in a narrative format. If tables are used, consult a risk assessor. Save complex risk tables for the ROD.
- Discuss only the major contaminants of concern that are driving the need for action at the site (unless necessary to justify a No Action decision).
- Link the site risks described in the baseline risk assessment to the need for taking action at the site (*i.e.*, use standard language in Highlight 3-2).

could also be discussed in this section if appropriate.[2] For an explanation of the term "RAO," see Section 6.3.8.

3.3.7 Summary of Remedial Alternatives

This section communicates to the public the lead agency's options for attaining the proposed remedial action objectives for the site. The *Summary of Remedial Alternatives* section should briefly describe the alternatives studied in the detailed analysis phase of the FS Report. The alternative that is recommended as the Preferred Alternative should be identified as such at the beginning of this section. Common elements of each alternative should be described at the beginning of the section, and the remainder should focus on those distinctions that make each alternative unique. This description should contain enough information about remedy components and distinguishing features so that the public can understand the conclusions drawn from the evaluation of alternatives. For example, if an alternative involves an ARAR waiver or will restrict potential land uses available following cleanup, these points should be stated in the alternative description, not mentioned for the first time in the evaluation of alternatives that follows.

Examples of remedy components include the following:

- *Any treatment technologies* employed and how they will reduce the intrinsic threats posed by the contamination (*e.g.*, toxicity, mobility)
- *Engineering controls* employed including temporary storage and permanent on-site waste containment.
- *Institutional controls* employed which will supplement any long-term engineering controls by providing notice of remaining contamination and/or restricting future activities that could result in exposure to residual contamination.

Technology terms used to describe remedy components that are likely to be unfamiliar to the public, such as "soil vapor extraction" or "treatment trains," should be explained in the remedial alternative description or in a glossary. Where possible, use general terms to describe cleanup technologies (*e.g.*, "biological treatment," "chemical extraction").

Distinguishing features will vary based on site-specific conditions and remedy specifications. These features may include:

- *Remedial action objectives to be achieved* (*e.g.*, one alternative might be aimed at treating highly contaminated soil while another is aimed at removing highly contaminated soil from the site).
- *Estimated quantities of material to be addressed* (*e.g.*, an alternative which will remediate discrete concentrated pockets of contaminants in soil will address fewer cubic yards of soil than an alternative which calls for remediation of all of the site's contaminated soil).
- *Implementation requirements* (*e.g.*, the need for an off-site disposal facility).

[2] PRGs are developed during the RI/FS and are based on ARARs and other readily available information, such as concentrations associated with 10^{-6} cancer risk or a hazard quotient equal to one for non-carcinogens calculated from EPA toxicity information. Initial PRGs may also be modified based on exposure, uncertainty, and technical feasibility factors. As data are gathered during the RI/FS, PRGs are refined into final contaminant-specific cleanup levels. Based on consideration of factors during the nine criteria analysis and using the PRG as a point of departure, the final cleanup level may reflect a different risk level within the acceptable risk range (10^{-4} to 10^{-6} for carcinogens) than the originally identified PRG.

- *Key ARARs* (generally action- or location-specific ARARs) that differ from those that must be attained by other alternatives. For example, source control remedies at industrial facilities which involve placement of RCRA hazardous waste or site closure should discuss RCRA Land Disposal Restrictions (LDRs) and RCRA Subtitle C or D closure standards, respectively. Any proposed ARAR waivers must be discussed pursuant to NCP §300.430(f)(2)(iv). RCRA treatability and no migration variances should also be discussed.

- *Reasonably anticipated future land use.* Note which alternatives facilitate the reasonably anticipated future land uses. Time frames and the amount of the site available for the reasonably anticipated future land use may vary across alternatives and should be noted as well.

- *Expected outcomes.* Describe the expected outcomes of each alternative in terms of its compatibility with reasonably anticipated future land uses, potential future ground-water uses, and other benefits or impacts associated with alternative remediation approaches.

- *Use of presumptive remedies or innovative technologies.*

Highlight 3-4: Tips on Writing Summary of Remedial Alternatives

- Identify the Preferred Alternative at the beginning of its description.
- Include enough information in the description of alternatives about remedy components and distinguishing features of each alternative so that the public will understand the comparative analysis.
- Describe components common to a number of alternatives only once (e.g., all alternatives, with the exception of the no action alternative, will attain PRGs).
- Include all three components of estimated cleanup costs — capital, annual O&M, and total present worth.

- *Estimated time to construct and implement the remedy until the Remedial Action Objectives are met.*

- *Estimated costs.* Cost must be separated into capital (construction), annual operations and maintenance (O&M), and total present worth. Long-term O&M costs can be a significant factor in determining which cleanup options are more or less expensive than others. A total present worth cost estimate for each alternative allows the public to compare different alternatives that have varying amounts of O&M costs. Use the same discount rate for all alternatives evaluated (current OSWER policy is 7%).

3.3.8 Evaluation of Alternatives

The Evaluation of Alternatives explains the lead agency's rationale for selecting the Preferred Alternative. The nine criteria used to evaluate the alternatives and compare them to one another in the detailed analysis in the FS should also be presented in the Proposed Plan. The rationale for selecting the Preferred Alternative should be presented in terms of its ability to appropriately balance the trade-offs with respect to the nine criteria. A glossary that defines each criterion may be used. A comprehensive analysis of each alternative in relation to each of the nine criteria need not be presented. The reader of the Proposed Plan should be directed to the comparative analysis contained in the RI/FS Report for a more detailed explanation. A table may be helpful in summarizing key information from the evaluation of alternatives, but should not substitute for a narrative discussion. If a table is used, the Proposed Plan should provide a narrative analysis of the information in the table.

The nine criteria fall into three groups: threshold criteria, primary balancing criteria, and modifying criteria. A description of the purposes of the three groups follows:

- *Threshold criteria,* which are requirements that each alternative must meet in order to be eligible for selection.

- *Primary balancing criteria,* which are used to weigh major trade-offs among alternatives.

- *Modifying criteria*, which may be considered to the extent that information is available during the FS, but can be fully considered only after public comment is received on the Proposed Plan. In the final balancing of trade-offs between alternatives upon which the final remedy selection is based, modifying criteria are of equal importance to the balancing criteria.

Highlights 3-5 and 3-6 present information on the organization of the criteria and the major points that should be addressed under each criterion. Additional information on the nine criteria and detailed analysis of alternatives are provided in the NCP and the *Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA, Interim Final* (EPA 540-G-89-004, October 1988).

3.3.9 Preferred Alternative

This section of the Proposed Plan describes the Preferred Alternative, and notes what key RAOs it will achieve as well as how it addresses source materials constituting principal threats (this provides a basis for satisfying the statutory preference for treatment as a principal element of the remedy). This section should also note that the Preferred Alternative can change in response to public comment or new information. A statement explaining the rationale for recommending the Preferred Alternative over other alternatives based on the nine criteria analysis must be included. Where appropriate, include figure(s) illustrating the proposed treatment technologies.

The Preferred Alternative summary should be similar to the following:

> *Alternative 2B, In-situ Soil Vapor Extraction, Solidification, and Capping is the Preferred Alternative. This alternative is recommended because it will achieve substantial risk reduction by both treating the source materials constituting principal threats at the site and providing safe management of remaining material. This combination reduces risk sooner and costs less than the other alternatives.*

A statement summarizing the support agency's concurrence or nonconcurrence with the recommended alternative, if known, must be included in the Proposed Plan, preferably in this section. Conclude with a summary statement similar to the following:

> *Based on information currently available, the lead agency believes the Preferred Alternative meets the threshold criteria and provides the best balance of tradeoffs among the other alternatives with respect to the balancing and modifying criteria. The (name of lead agency) expects the Preferred Alternative to satisfy the following statutory requirements of CERCLA §121(b): (1) be protective of human health and the environment; (2) comply with ARARs (or justify a waiver); (3) be cost-effective; (4) utilize permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable; and (5) satisfy the preference for treatment as a principal element, or explain why the preference for treatment will not be met.*

Highlight 3-5: Nine Criteria for Remedial Alternatives Evaluation

THRESHOLD CRITERIA

1 Overall Protection of Human Health and the Environment

- How the Alternative Provides Human Health and Environmental Protection

2 Compliance with ARARs (Or justification of a Waiver)

- Compliance with Chemical-Specific ARARs
- Compliance with Location-Specific ARARs
- Compliance with Action-Specific ARARs
- Compliance with Other Criteria, Advisories, and Guidance

PRIMARY BALANCING CRITERIA

3 Long-Term Effectiveness and Permanence

- Magnitude of Residual Risk
- Adequacy and Reliability of Controls

4 Reduction of Toxicity, Mobility, or Volume Through Treatment

- Treatment Process Used and Materials Treated
- Amount of Hazardous Materials Destroyed or Treated
- Degree of Expected Reductions in Toxicity, Mobility, or Volume
- Degree to Which Treatment is Irreversible
- Type and Quantity of Residuals Remaining After Treatment

5 Short-Term Effectiveness

- Protection of Community During Remedial Actions
- Protection of Workers During Remedial Actions
- Environmental Impacts
- Time Until Remedial Action Objectives are Achieved

6 Implementability

- Ability to Construct and Operate the Technology
- Reliability of the Technology
- Ease of Undertaking Additional Remedial Actions, if Necessary
- Ability to Monitor Effectiveness of Remedy
- Ability to Obtain Approvals from Other Agencies
- Coordination with Other Agencies
- Availability of Off-Site Treatment, Storage, and Disposal Services and Capacity
- Availability of Necessary Equipment and Specialists
- Availability of Prospective Technologies

7 Cost

- Estimated Capital Costs
- Estimated Annual Operation and Maintenance Costs
- Estimated Present Worth Costs

MODIFYING CRITERIA[1]

8 State Acceptance

- Features of the Alternative the State Supports
- Features of the Alternative About Which the State has Reservations
- Elements of the Alternative the State Strongly Opposes

9 Community Acceptance

- Features of the Alternative the Community Supports
- Features of the Alternative About Which the Community has Reservations
- Elements of the Alternative the Community Strongly Opposes

[1]These criteria are fully assessed following comment on the RI/FS Report and the Proposed Plan, and are fully addressed in the ROD.

Highlight 3-6: Tips For Preparing Nine Criteria Analysis

Overall Protection of Human Health and the Environment

In every FS, a "no action" alternative is developed as a baseline for comparative analysis purposes. In cases where the no action alternative is found not to meet this criterion, it can be ruled out for further consideration and, therefore, need not be discussed further in the nine criteria analysis.

Compliance with ARARs

For an alternative to pass into the detailed analysis stage of the RI/FS and thus become eligible for selection, it must comply with its ARARs or a waiver should be identified and the justification provided for invoking it. An alternative that cannot comply with ARARs, or for which a waiver cannot be justified, should be eliminated from consideration for further discussion as a potential alternative in the Proposed Plan or ROD.

Long-Term Effectiveness and Permanence

Long-term effectiveness and permanence of an alternative should be viewed along a continuum (*i.e.*, an alternative can offer a greater or lesser degree of long-term effectiveness and permanence). Alternatives that are more effective in the long-term are more permanent.

Reduction of Toxicity, Mobility, or Volume Through Treatment

Each characteristic (*i.e.*, toxicity reduction through treatment, mobility reduction through treatment, and volume reduction through treatment) should be analyzed independently and collectively to determine how effectively treatment is being employed by the remedial alternative. In addition, other elements should be considered such as the risks posed by residuals. A containment remedy does not reduce the toxicity, mobility, or volume of contaminants through treatment.

Short-Term Effectiveness

Short-term effectiveness considers the amount of time until the remedy effectively protects human health and the environment at the site. It also includes an evaluation of the adverse effects the remedy may pose to the community, workers, and the environment during implementation. Possible adverse effects should be evaluated in advance to determine mitigative steps to adequately minimize the impact on the community, workers, or environment and to minimize any risks that would remain at the site. Institutional controls and other active measures (*e.g.*, interim remedies and removal actions) can often mitigate short-term effects and, therefore, should be considered when analyzing the remedial alternative.

Implementability

This criterion considers the ease of implementing the remedy in terms of construction and operation, and the availability of services and materials required to implement the alternative. Technical considerations also include the reliability of the technology, the effect on future remedial action options, and monitoring at the site. It is important to consider and include variables such as the site's topography, location, and available space. Implementability is significant when evaluating treatment technologies that are dependent on resources such as facilities, equipment, professionals or experts, and especially technologies that have not been proven effective. In addition, administrative feasibility, which includes activities that need to be coordinated with other offices and agencies (*e.g.*, obtaining permits for off-site activities or rights-of-way for construction), should be addressed when analyzing this criterion.

Cost

The costs of remedies always should be qualified as estimates with an expected accuracy of +50% to -30%

State/Support Agency Acceptance

Where there are major support agency comments, they must be summarized under this criterion (see NCP §300.430(f)(2)). The lead agency's response to those comments also should be summarized here.

Community Acceptance

Because information available on the community acceptance criterion may be limited before the public comment period for the Proposed Plan and the RI/FS Report, the Proposed Plan should indicate that this factor will be fully evaluated in the ROD. However, the Proposed Plan should also provide a preliminary summary of communities' views, with special emphasis from those in the community directly impacted or affected. Proposed Plans should not speculate on community acceptance of the alternatives.

Highlight 3-7: Tips on Writing Preferred Alternative

- Clearly describe the decisive factors that form the basis of why the Preferred Alternative is recommended over the other alternatives.
- Mention any uncertainties or contingencies related to the Preferred Alternative.
- Emphasize that the Preferred Alternative is based on current information and that it could change in response to public comment or new information.

3.3.10 Community Participation

Information on how the public can be involved in the remedy selection process should be presented in the Proposed Plan to fulfill the public participation requirements under NCP §300.430(f)(3). Depending on the format of the Proposed Plan, community participation information can be placed on the front page or in a separate section at the end of the Proposed Plan. The sample Proposed Plan in Appendix A illustrates the placement of community participation information on both the front page and at the end of the Plan. The following public participation information should be included in the Proposed Plan:

- Dates of the public comment period (*e.g.*, March 1 through March 30);
- Date, time, and location of the public meeting on the Proposed Plan (or an offer to hold a meeting upon request if one has not been scheduled);
- Locations of the Administrative Record file;
- Names, phone numbers, and addresses of the lead and support agency personnel (including an Internet address) who will receive comments on the Proposed Plan or who can supply additional information; and
- Name and contact number of local Community Advisory Group (CAG), if applicable.

In addition to the above information, a sheet on which the public can submit written comments can be provided in the Proposed Plan (see the last page of Appendix A for an example).

3.4 FORMAT FOR THE PROPOSED PLAN

The Proposed Plan should be written clearly and concisely, since it will likely be read by a broad public audience. The Plan should tell the story of the site so that those unfamiliar with the site will understand the contamination problems and the risks they pose.[3] The Plan should clearly describe why the lead agency is recommending the Preferred Alternative.

It is very important that the level of detail and content of the Proposed Plan be tailored to the needs and concerns of the individual community that lives around a Superfund site and the stakeholders involved in the Superfund remedy selection process (*e.g.*, PRPs). The lead agency should identify its intended audience prior to preparation of the Proposed Plan in order to optimize its effectiveness. Additional fact sheets may be necessary depending on site circumstances (see Section 3.5).

Appendix A contains an example of a Proposed Plan that follows the format and content recommended by this guidance document. This format is recommended for most sites as it affords the public and involved stakeholders the most complete and explicit rationale for the Preferred Alternative.

3.5 PROPOSED PLAN FACT SHEET

A shorter summary of the remedy selection process, with less technical information, may help to ensure that the widest possible audience is reached. Therefore, this guidance recommends the development of a Proposed Plan fact sheet whenever a more detailed Proposed Plan is prepared.

The front page of a fact sheet should be designed to attract the attention of lay readers. It should highlight the proposed remedy and encourage the reader to

[3] Illustrations of the site and technological processes being proposed, as well as tables and/or charts, should be utilized to maximize the public's understanding of site conditions, potential risks, alternatives being considered, and the Preferred Alternative.

submit comments. The fact sheet should then describe the risks posed by the site and the alternatives considered. The back page should reiterate how the public can obtain copies of the Proposed Plan and submit comments, and should note points of contact for questions and further information. An example of a Proposed Plan fact sheet is provided on the next page. This is an example of a fact sheet that could accompany the sample Proposed Plan found in Appendix A.

3.6 PROPOSED PLANS TO HEADQUARTERS

All draft Proposed Plans should be sent to the appropriate EPA headquarters regional coordinator for review pursuant to *Focus Areas for Headquarters OERR Support for Regional Decision Making* (OSWER 9200.1-17, May 1996). Some remedy selection decisions will also be eligible for consultation with the National Remedy Review Board or another Cross-Regional review group. See the Remedy Review Board web site (http://www.epa.gov/ superfund/programs/nrrb/index.htm) and Appendix C for a more information on Proposed Plan consultation procedures. Final Proposed Plans should be sent to EPA Headquarters consistent with the procedures described in Appendix D (Records of Decision and Other Decision Documents to EPA Headquarters).

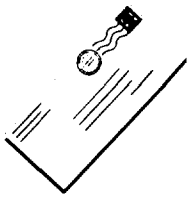
Invitation to Comment on the Proposed Cleanup of EIO Industrial Site, Nameless, TN

You have the chance to comment on the Proposed Plan for cleaning up the EIO Industrial Superfund site at a public meeting on March 13, 1999. The United States Environmental Protection Agency (EPA) and the Tennessee Department of Environment and Conservation (TDEC) want to hear your views about the plans for this toxic waste cleanup project. We have carefully studied the site and now believe that the following actions are the best way to protect your health and the environment.

- Dig up 7,500 cubic yards of contaminated soil. Heat the soil through a process called thermal desorption, which will separate out and collect dangerous toxins. These toxic materials will be sent to a licensed hazardous waste disposal facility. The cleaned soil will be returned to the area it came from and covered with soil and grass. This will cost $6.2 million and take 2 years to complete.
- Pump the more highly contaminated ground water to the surface. Run it through a special treatment system (involving air-strippers and carbon adsorption) to remove the dangerous chemicals. Discharge the clean water to the XYZ River. Keep watch on the remaining ground water to make certain it presents no further danger. This will cost $3.7 million and take 18 years to complete.

You may make comments at the public meeting. You also have until March 30, 1999, to supply written comments on the Proposed Plan or other material in the Administrative Record file. At the end of the comment period, EPA and TDEC will review the suggestions and make a final decision about the site cleanup. Your input on the Proposed Plan is an important part of the decision- making process. We want to hear from you and will pay serious attention to what you have to say.

Tell Us What You Think



Submit Written Comments

Public Comment Period:

March 1 – March 30, 1999

EPA will accept written comments on the Proposed Plan during the public comment period. You may submit your comments to:

Ms. RPM
U.S. EPA (Mail Code 4XXX)
61 Forsyth Street, S.W.
Atlanta, GA 30303-3104

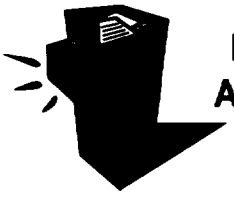
Attend the Public Meeting

Public Meeting:

You are invited to a meeting sponsored by EPA to hear about the Proposed Plan for cleaning up the EIO Industrial site. At the meeting you will be able to state your views about the cleanup.

The meeting will be held:

March 13, 1999
7:30 p.m.
at
Nameless Community Hall
237 Appleton Street
Nameless, TN



Locations of Administrative Record

Public Library
619 South 20th Street
Nameless, TN 00000
(101) 999-1099
Hours: Mon-Sat, 9 a.m. to 9 p.m.

U.S. EPA Records Center
Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303-3104
(555) 555-5555
Hours: Mon-Fri, 8:30 a.m. to 5:00 p.m.

SITE RISKS

During the 1980s, the EIO Industrial Company disposed of liquid industrial wastes at its factory located at 81 North Delaware Avenue in Nameless, Tennessee. EPA and TDEC have spent the last two years studying the property to determine what risks it poses to the health and welfare of the people who live or work near it. We found that there is some risk to people who come into contact with contaminated soil or ground water. While the chance of becoming sick as a result of exposure to the contaminants is small, it is serious enough to require that actions be taken to reduce the levels of chemicals present in the soil and ground water to safe levels. To provide more protection while the cleanup is being done, we have already put a fence around the site and connected 50 homes to the public water supply system.

CLEANUP GOALS

- Reduce further contamination of surface and ground waters.
- Restore the ground water to standards established under the Safe Drinking Water Act.
- Reduce the risk posed by direct contact with contaminated soils.

YOUR COMMENTS

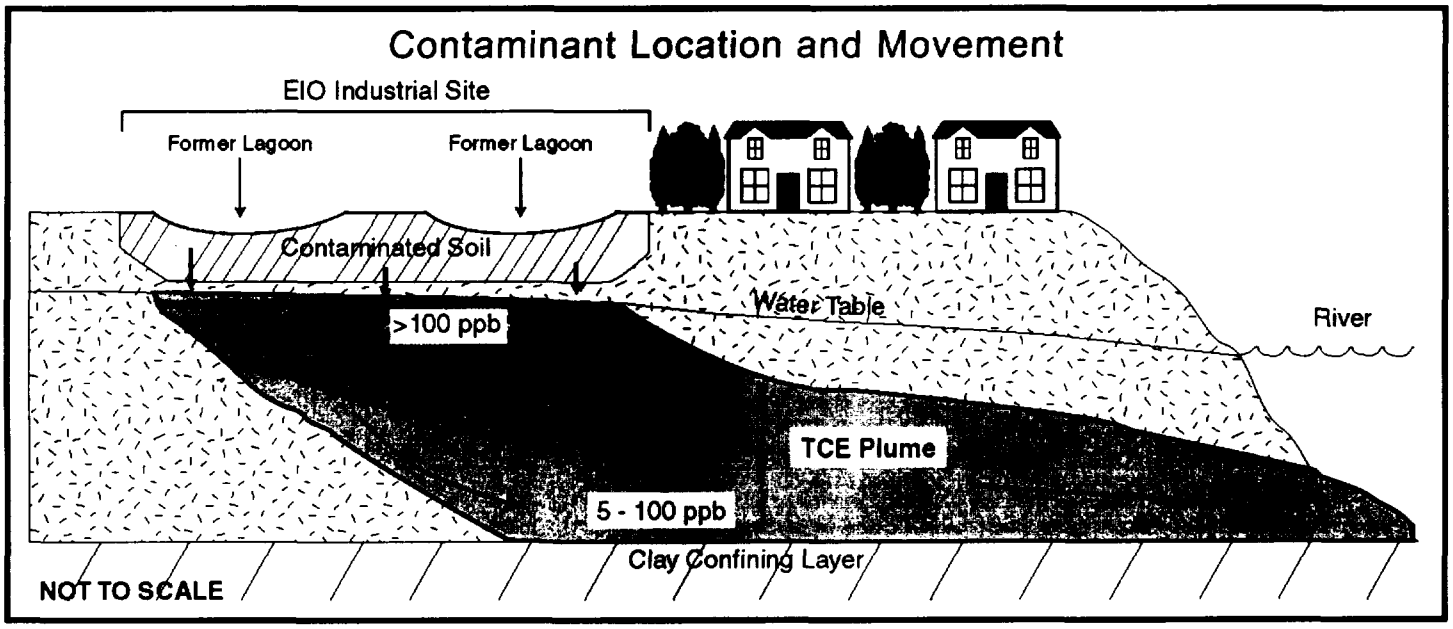
We looked at a number of ways to meet the cleanup goals, which are described more completely in the Proposed Plan and Administrative Record file. EPA and TDEC believe that the Preferred Alternative identified on the previous page will protect your health and the environment and can be done without major nuisance to your community. However, before making a final decision, we want to hear what you think. We encourage you to find out more about the cleanup plan and make your views and concerns known on all the options that were considered. The cleanup plan that is finally chosen will be described in a Record of Decision. That document will include a summary of the comments received along with how those comments changed the decision that was reached.

FOR MORE INFORMATION . . .

You can see a copy of the Proposed Plan, which describes the cleanup alternatives we studied, and also get more information about the site by visiting the Administrative Record file which can be found at:

Public Library
619 South 20th Street
Nameless, TN 00000
Tel: 101-999-1099
Hours: Mon-Sat 9 a.m. to 9 p.m.

You can also stop by the EPA office that is on the site to see a copy of the Plan. That office is open to the public Mondays and Thursdays from 3 p.m. to 8 p.m. Finally, you can ask for a copy of the Proposed Plan to be sent to you by calling 1-800-333-3333.



RECOMMENDED OUTLINE AND CHECKLIST FOR A PROPOSED PLAN

See Chapter 3 of ROD Guidance for more information

A. Introduction

- ☐ Site name and location.
- ☐ Lead and support agencies (*e.g.*, EPA, State, Federal facility).
- ☐ Purpose of document (*i.e.*, satisfy statutory and regulatory requirements for public participation). At a minimum, the Proposed Plan must:
  - Provide a brief summary description of the remedial alternatives evaluated in the detailed analysis;
  - Identify and provide a discussion of the rationale that supports the Preferred Alternative;
  - Provide a summary of any formal comments received from the support agency; and
  - Provide a summary explanation of any proposed ARAR waiver.
- ☐ Refer the public to the RI/FS Report and Administrative Record file for more information.

B. Site Background

- ☐ Contaminated media at the site (*e.g.*, soil, air, ground water, and surface water).
- ☐ History of waste generation or disposal that led to current problems.
- ☐ History of Federal State, and local site investigations.
- ☐ Description of removal or previous remedial actions conducted under CERCLA or other authorities.
- ☐ History of CERCLA enforcement activities at the site (*e.g.*, brief description of PRP searches or special notices issued, and whether PRPs have conducted any of the studies upon which the Proposed Plan is based).
- ☐ Description of major public participation activities initiated *prior* to the issuance of the Proposed Plan.

C. Site Characteristics

- ☐ Geographical or topographical factors that had a major impact on remedy selection (*e.g.*, resources affected or threatened by site contamination such as current or potential drinking water sources or wetlands).
- ☐ Nature and extent of contamination (*i.e.*, vertical and lateral extent of contaminated areas).
- ☐ A site map that shows location of roads, buildings, drinking water wells and other characteristics that are important to understanding why the remedial objectives and Preferred Alternative are appropriate for the site.
- ☐ Materials constituting principal threats (*e.g.*, location, volume and nature of mobile/high-toxicity/high-concentration source material).

D. Scope and Role of Operable Unit (OU) or Response Action

- ☐ Overall cleanup strategy for the site.
- ☐ Scope of problems addressed by the operable unit.
- ☐ Relationship of proposed action to removal or other operable units at the site (include purpose of each operable unit and sequence of the action in relation to other operable units or removals).
- ☐ How action addresses source materials constituting principal threats (*e.g.*, treatment technology will be used to permanently reduce the toxicity, mobility, and volume of these source materials).

[Note: Remedies which involve treatment of source materials constituting principal threat wastes likely will satisfy the statutory preference for treatment as a principal element, although this will not necessarily be true in all cases.]

E. Summary of Site Risks

- ☐ Key findings of the baseline risk assessment by describing the:
  - Major chemicals of concern (COCs) in each medium;
  - Land and ground-water use assumptions;
  - Potentially exposed populations in current and future risk scenarios (*e.g.*, worker currently on site, adult or children living on site in future);
  - Exposure pathways (routes of exposure) and how they relate to current or reasonably anticipated future land and ground-water use; and
  - Estimated cancer and non-cancer risks associated with exposure pathways for chemicals of concern that are driving the need for action.
- ☐ Conclusions of the ecological risk assessment (*e.g.*, the basis of environmental risks associated with specific media and how these risks were determined).
- ☐ Standard concluding statement that supports the need for taking action (unless it is a "no action" situation):

  "It is the lead agency's current judgment that the Preferred Alternative identified in this Proposed Plan, or one of the other active measures considered in the Proposed Plan, is necessary to protect public health or welfare or the environment from actual or threatened releases of hazardous substances into the environment."

F. Remedial Action Objectives

- ☐ Proposed Remedial Action Objectives (RAOs) and how they address site risks (*e.g.*, prevent contamination from reaching the ground water by treating the contaminated soils).
- ☐ Present and describe the basis for preliminary cleanup levels (which will become final remediation goals in the ROD) for *major* contaminants of concern (*e.g.*, preliminary remediation goal of 5 ppm for TCE is based on Federal MCL for drinking water).

G. Summary of Remedial Alternatives

- ☐ Narrative description of alternatives evaluated including remedy components and distinguishing features unique to each alternative.
- ☐ Remedy components should include:
  - Treatment technologies employed and a how they will reduce the intrinsic threat posed by the contamination;
  - Engineering controls including temporary storage and permanent on-site containment;
  - Institutional controls that will restrict future activities that might result in exposure to contamination (*e.g.*, easements and covenants); and
  - Monitoring requirements.
- ☐ Distinguishing features could include:
  - Remedial action objectives (RAOs) to be achieved by the alternative (*e.g.*, return surface water to recreational use);
  - Estimated quantities of material to be addressed by major components;
  - Implementation requirements (*e.g.*, the need for an off-site disposal facility);
  - Key ARARs, proposed ARAR waivers, and RCRA treatability and no migration variances;
  - Reasonably anticipated future land use and whether or not it will be achieved by the alternative;
  - Expected outcomes (*e.g.*, in terms of compatibility with reasonably anticipated future land uses);
  - Use of presumptive remedies or innovative technologies;
  - Estimated time to construct and implement the remedy until RAOs are met; and
  - Estimated costs, separated into capital (construction), annual operations and maintenance (O&M), and total present worth costs.

H. Evaluation of Alternatives

- ☐ Explanation of the nine evaluation criteria and how they are used to analyze the alternatives. A glossary that defines the criteria may be used.

I. Preferred Alternative

- ☐ Identification of the Preferred Alternative, the RAOs that it would achieve, and how it will address source materials constituting principal threats at the site.
- ☐ Statement that the Preferred Alternative can change in response to public comment or new information.
- ☐ A brief statement that describes the most decisive considerations from the nine criteria analysis that affected the selection of the Preferred Alternative (*e.g.*, completion of remedy sooner and at less cost than other alternatives).
- ☐ Any uncertainties or contingency measures.
- ☐ Expected outcomes of the Preferred Alternative, including risk reduction (how risk identified in baseline risk assessment will be addressed).
- ☐ The support agency's concurrence or non-concurrence with the Preferred Alternative, if known.
- ☐ Concluding summary statement by the lead agency at the end of this section similar to:

  "Based on information currently available, the lead agency believes the Preferred Alternative meets the threshold criteria and provides the best balance of tradeoffs among the other alternatives with respect to the balancing and modifying criteria. The (name of lead agency) expects the Preferred Alternative to satisfy the following statutory requirements of CERCLA §121(b): 1) be protective of human health and the environment; 2) comply with ARARs (or justify a waiver); 3) be cost-effective; 4) utilize permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable; and 5) satisfy the preference for treatment as a principal element (or justify not meeting the preference)."

J. Community Participation

- ☐ Dates of public comment period for the Proposed Plan (written to encourage public comments).
- ☐ Time and place for a public meeting(s) (already scheduled) or offer opportunity for meeting if one has not been scheduled.
- ☐ Locations of the Administrative Record file.
- ☐ Names, phone numbers and addresses of lead and support agency personnel who will receive comments or can supply additional information.
- ☐ Name and contact number of local Community Advisory Group (CAG), if applicable.

4.0 PRE-RECORD OF DECISION CHANGES

4.1 OVERVIEW

After the public comment period ends, a remedial alternative is selected as the remedy that will be documented in the ROD. The selection of the remedy is based on the analysis presented in the Proposed Plan and RI/FS Report, giving consideration to the comments received from the support agency and the public, as well as any other new and significant information received or generated during the public comment period. The lead agency may re-evaluate its Preferred Alternative in light of this information and may change a component of the preferred remedy or choose to select a remedy other than the Preferred Alternative in making the final remedy selection decision.

The NCP requires that certain steps be taken after publication of the Proposed Plan and before remedy selection in the ROD if new information is made available that significantly changes the basic features of the Preferred Alternative identified in the Proposed Plan. The lead agency must determine the following: 1) are the changes significant, and 2) could the changes have been reasonably anticipated based on the information presented to the public (NCP §300.430(f)(3)(ii)).

This chapter presents a general framework for determining if changes to the Preferred Alternative are "significant" or "minor." It also specifies documentation and communication activities that may be necessary to inform the public of these changes. The chapter discusses changes made before the ROD is signed; post-ROD changes are discussed in Chapter 7.

4.2 IDENTIFYING TYPES OF PRE-RECORD OF DECISION CHANGES

The lead agency has the discretion to make changes to the Preferred Alternative identified in the Proposed Plan based either on new information received from the public or support agency or on information generated by the lead agency itself during the remedial process. A site-specific determination of what constitutes a significant (as opposed to minor) change, and therefore the extent of documentation required, is made after taking into consideration the impact that the change may have on the Preferred Alternative's scope, performance, or cost.

4.2.1 Minor Changes

Minor changes are those that have little or no impact on the overall scope, performance, or cost of the alternative originally presented in the Proposed Plan as the Preferred Alternative for the site or operable unit. Such changes typically will be clarifications, administrative changes, and minor technical or engineering changes that do not significantly alter the overall scope, performance, or cost of the alternative.

4.2.2 Significant Changes

In contrast to minor changes, significant changes have a significant or fundamental effect on the scope, performance, and/or cost of the Preferred Alternative. Examples of these three factors include:

- *Scope*: Changes that substantially alter the type of treatment or containment technology, physical area of response, remediation goals, or type and volume of waste to be addressed.

- *Performance*: Changes in treatment technologies or processes that significantly alter the long-term effectiveness of the Preferred Alternative or that have significantly different short-term effects.

- *Cost*: Changes to any aspect of the Preferred Alternative that substantially alter the capital or O&M cost estimates for the alternative. Feasibility Study cost estimates are expected to provide an accuracy of +50 percent to -30 percent.

Significant changes generally involve either of the following:

- Selecting an RI/FS alternative other than the Preferred Alternative identified in the Proposed Plan as the remedy.

- Substantially modifying a component of the previously identified Preferred Alternative.

"Significant change" is not specifically defined in this guidance because what constitutes a significant change

will vary depending upon site circumstances and the manner in which the information was presented in the RI/FS Report and Proposed Plan. Highlight 4-1 summarizes the process for analyzing and documenting pre-ROD changes.

4.3 DOCUMENTING PRE-RECORD OF DECISION CHANGES

CERCLA §117(b) and NCP §300.430(f)(3)(ii) require that if significant pre-ROD changes that could be reasonably anticipated are made to the recommended remedy, these changes and the reason for the changes must be discussed in the ROD.

4.3.1 Documenting Minor Changes

Although the NCP does not require documentation of minor changes, such changes to the Proposed Plan should be discussed in the *Description of Alternatives* section of the ROD's *Decision Summary* and should be documented in the Administrative Record file. Minor changes should not be discussed in the *Documentation of Significant Changes* section of the ROD's *Decision Summary.*

4.3.2 Documenting Significant Changes

NCP §300.430(f)(3)(ii) states that after publication of the Proposed Plan and prior to the adoption of the Selected Remedy in the ROD, if new information is made available that significantly changes the basic features of the remedy with respect to scope, performance, or cost, such that the remedy significantly differs from the original proposal in the Proposed Plan and the supporting analysis and information, the lead agency must:

- Include a discussion in the ROD of the significant changes and reasons for such changes, if the lead agency determines such changes could be reasonably anticipated by the public based on the alternatives and other information available in the Proposed Plan or the supporting analysis and information in the Administrative Record file; or

- Seek additional public comment on a revised Proposed Plan, when the lead agency determines the change could not have been reasonably anticipated by the public based on the information available in the Proposed Plan or the supporting analysis and information in the Administrative Record file. The lead agency must, prior to adoption of the Selected Remedy in the ROD, issue a revised Proposed Plan, which must include a discussion of the significant changes and the reasons for such changes.

Scenario 1: Significant Changes That Could Have Been Reasonably Anticipated Based on the Information Available to the Public

A significant change that could be reasonably anticipated based on information available to the public in the Proposed Plan or the supporting analysis and information in the Administrative Record file must be discussed in the ROD (*i.e.*, documented at the end of the ROD's *Decision Summary* in the *Documentation of Significant Changes* section). Additional public notice or comment on this type of change is not required, but may be advisable on a site-by-site basis. Examples of significant changes that may be considered "reasonably anticipated" include the following:

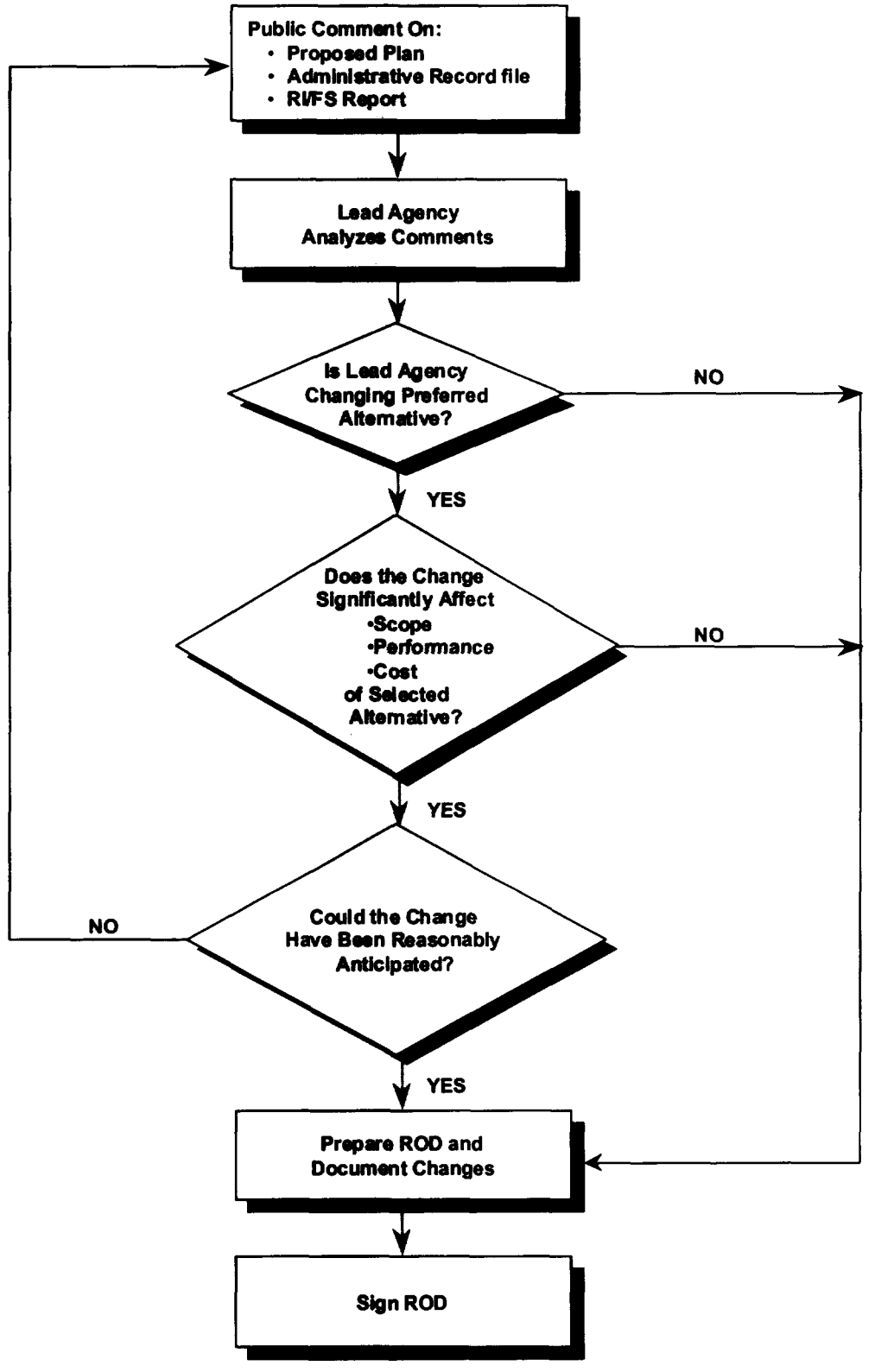
- ***Changing a Component of the Preferred Alternative***

In response to comments, the lead agency makes a significant change to a component of the Preferred Alternative that could have been reasonably anticipated by the public based on information in the RI/FS and Proposed Plan (*e.g.*, a change in the Preferred Alternative's cost, timing, level of performance, or ARARs).

- ***Selecting a Different Alternative***

More than one acceptable alternative is identified in the Proposed Plan, and the lead agency subsequently determines that an alternative other than the Preferred Alternative provides the most appropriate balance of trade-offs among the alternatives with respect to the nine evaluation criteria. Because the public had been apprised previously that the alternative (or any other alternative in the detailed analysis) might be selected as the remedy, the public had adequate opportunity to review and comment on it, and thus the change can be documented in the ROD without additional public comment.

Highlight 4-1: Pre-Record of Decision Changes



- *Combining Components of Alternatives*

In response to comments received during the public comment period and consistent with options presented in the Proposed Plan, the final remedial alternative combines one component of the Preferred Alternative (*e.g.*, a ground-water component) with a component of another alternative that was evaluated in the FS (*e.g.*, additional source control measures).

Scenario 2: Significant Changes That Could Not Have Been Reasonably Anticipated Based on the Information Available to the Public

In those limited situations in which the significant change could not have been reasonably anticipated by the public based on information in the Proposed Plan and Administrative Record file, a revised Proposed Plan that presents the new Preferred Alternative must be issued for public comment (NCP §300.430(f)(3)(ii)(B)). The revised Proposed Plan must be prepared in accordance with both CERCLA §117 and the NCP. Appropriate supporting material that provides the necessary engineering, cost, and risk information for the new alternative, and that discusses how the new alternative compares to the other alternatives with respect to the nine evaluation criteria should be provided in the revised Proposed Plan. It may be appropriate to provide this information as a supplement to the RI/FS Report, but it should be summarized for the public in the Proposed Plan.

In addition, the significant changes to the initial Proposed Plan should be documented at the end of the ROD's *Decision Summary* in the *Documentation of Significant Changes* section. This description should identify the changes to the Preferred Alternative and the reason for the changes. Examples of significant changes that could not be considered "reasonably anticipated" include the following:

- *Identification of a New Preferred Alternative Not Previously Considered*

The lead agency determines that an alternative not presented in the Proposed Plan or detailed analysis phase of the RI/FS Report should be selected as the remedy. The new Preferred Alternative is not a combination of different components of the alternatives considered. The lead agency must issue a revised Proposed Plan that presents the new Preferred Alternative and provides appropriate supporting information for public comment.

- *Significant Change to a Component of the Preferred Alternative*

Part of the remedy must be altered, resulting in fundamental changes to the remedy. Such changes require additional public comment if they will significantly change the basic features of the remedy (*e.g.*, a change in the remedy that results in a significant increase in the volume of waste managed, the physical scope of the action, the institutional controls required to maintain the integrity of the remedy, or the estimated cost of the action).

Use of an ARAR waiver may require a revised Proposed Plan if not discussed in the original Proposed Plan. The NCP specifies that ARAR waivers must be discussed in a Proposed Plan so that the public will have an opportunity to comment on the use of the waiver and the alternative cleanup levels proposed (NCP §300.430(f)(2)(iv)).

Highlight 4-2 presents examples of minor changes, as well as significant changes that could and could not have been reasonably anticipated by the public. Guidance on how to document significant pre-ROD changes in the ROD is presented in Section 6.3.14.

Highlight 4-2: Examples of Pre-Record of Decision Changes

(NOTE: Examples are not meant to present strict thresholds for changes in cost, volume, or time.)

Minor Changes

- It was determined that a remedy will require an estimated 10 ground water extraction wells, rather than six wells, as estimated originally in the Proposed Plan, to achieve remedial action objectives within the estimated time period.

- The volume of material to be excavated and treated is actually 120,000 cubic yards, rather than the 110,000 cubic yards, as estimated originally in the Proposed Plan.

- Based on information received during the public comment period, the lead agency determined that the capital cost estimate in the Proposed Plan was about 10 percent too low; the revised estimated capital cost of the remedy is $5,100,000. The lead agency also identified factors that would extend the implementation time frame from 15 to 20 months. These changes do not significantly alter the scope, performance, or cost of the remedy.

Significant Changes That Could Be Reasonably Anticipated

- The Proposed Plan for a site recommends one alternative to address contaminated soils and another to remediate the ground water from among several sets of alternatives. The lead agency chooses to retain the Preferred Alternative for the ground-water component of the remedy, but selects a different soil remediation alternative from among those presented as acceptable options in the Proposed Plan.

Significant Changes That Could Not Be Reasonably Anticipated

- Low temperature thermal desorption, which was NOT presented in the Proposed Plan or the detailed analysis section of the FS, is the preferred remedy for the site, because new information was received indicating that low temperature thermal desorption could be used effectively at the site. This new remedy, however, is quite different in scope and performance from any other alternative considered in detail in either the Proposed Plan or RI/FS Report. Because the public has not had an adequate opportunity to comment on the technical, environmental, and human health aspects of the remedy or to evaluate and compare its performance in terms of the nine evaluation criteria, a revised Proposed Plan must be prepared and a new public comment period should be held on the new recommended remedy before a remedy is selected in the ROD.

5.0 PROCESS FOR DEVELOPING THE RECORD OF DECISION

This chapter describes the roles and responsibilities of the lead and support agencies in developing the ROD. Procedures to facilitate timely preparation, review, and final approval of the ROD are presented in this chapter, as well as dispute resolution procedures and the role of other Federal agencies in cleanup activities at Federal facilities.

5.1 OVERVIEW

As with the Proposed Plan, the lead agency has the responsibility for preparing the ROD and coordinating with the support agency and other lead agency program offices to seek or attain (as appropriate) concurrence on the Selected Remedy. Typically, the lead agency that prepares the RI/FS Report and the Proposed Plan will prepare the ROD, although this may vary from site to site. In many cases, EPA is the lead agency and prepares the ROD; however, the State can prepare the ROD for concurrence and adoption by EPA when the State is designated the lead agency in the CA. States may sign the ROD without EPA concurrence for a non-Fund-financed State-lead enforcement response action (*i.e.*, actions taken under State law). Federal agencies must prepare RODs for Federal facility sites on the NPL, consistent with the terms of their IAGs and CERCLA §120. At NPL sites, RODs are generally signed jointly by EPA and the other Federal agency. At a Federal facility NPL site where the lead federal agency and EPA are not able to agree on the remedial approach, EPA selects the remedial action for that Federal facility site (*i.e.*, EPA concurrence is required for RODs at NPL sites on Federal facilities).

Although the roles of EPA and the State vary from site to site, EPA retains the final authority for remedy selection for all responses which are Federally funded or are to be carried out by a PRP pursuant to a CERCLA enforcement action.

5.1.1 State Preparation of ROD

For cases where the State is the lead agency or is using CERCLA enforcement authority, and it is a Fund-financed remedial action, the State must recommend a remedy for EPA concurrence and adoption. Through the annual planning process, EPA and the State should designate those sites for which the State should prepare the ROD (NCP §300.515(h)(1)).

EPA intends to implement judiciously the process of State preparation of RODs, generally giving the State the lead only when both of the following conditions are met:

- The circumstances at a particular site warrant less EPA involvement and more State involvement.
- The State has demonstrated its ability to conduct remedial actions in an effective and responsible manner.

When the State is the lead agency for developing the RI/FS at a Fund-financed site, the State should prepare the Proposed Plan, and if EPA concurs, the State should publish the notice of availability, prepare the Responsiveness Summary, and develop the ROD. When the State prepares the ROD, the State must obtain EPA concurrence to receive Superfund monies or to use CERCLA authority for remedial action. If EPA concurs, then the ROD can be signed jointly by both agencies and EPA funding can be provided. In such cases, EPA retains final authority over remedy selection even though the State prepared the ROD.[1]

5.2 ROLE OF LEAD AND SUPPORT AGENCIES

The responsibilities outlined below for the lead and support agency apply to EPA, a State, an Indian tribe, or another Federal agency, except where specifically noted.

[1] Not every remedial activity taken at sites is conducted under CERCLA §§104, 106, or 122. NCP §430.515(e)(2)(ii) notes that EPA concurrence is not required when a State selects a remedy at a non-Fund-financed State-lead enforcement site. Further guidance on State-lead enforcement actions is available in *Questions and Answers About the State Role in Remedy Selection at Non-Fund-Financed Enforcement Sites* (OSWER 9831.9, April 1991).

5.2.1 Lead Agency

The NCP states that the lead agency must reassess its initial determination that the Preferred Alternative provides the best balance of trade-offs, now factoring in any new information or points of view expressed by the State (or support agency) and community during the public comment period. The lead agency must consider State (or support agency) and community comments regarding the lead agency's evaluation of alternatives with respect to the other criteria. These comments may prompt the lead agency to modify aspects of the Preferred Alternative or decide that another alternative provides a more appropriate balance. The lead agency must make the final remedy selection decision and document that decision in the ROD (NCP §300.430(f)(4)(i)). In addition, the lead agency must publish a notice of availability of the ROD in a major local newspaper of general circulation and must make the ROD available for public inspection and copying at or near the facility at issue prior to commencement of any remedial action (NCP §300.430(f)(6)).[2]

Generally the lead agency performs the following steps during the ROD development process (see Highlight 5-1):

- Preparing the draft ROD;[3]
- Briefing lead agency upper management on the ROD;
- Submitting the draft ROD to other lead agency program offices and to the support agency for review and comment (see Consultation Procedures outlined in Appendix C);
- Reviewing and responding to comments and revising the ROD, if necessary;
- Briefing the Regional Administrator or delegated decision-maker (and, if necessary, the appropriate Headquarters manager or the Assistant Administrator of OSWER) as well as the designated personnel in the support agency;
- Submitting the ROD to the Regional Administrator or the Assistant Administrator of OSWER, if necessary, for signature (if a State or a Federal agency is the lead agency, both the lead agency and EPA should generally sign the ROD, except when it is a non-Fund-financed State-lead enforcement site); and
- Publishing the notice of ROD availability.

5.2.2 Support Agency

The lead agency must provide the support agency with an opportunity to review and comment on the ROD (NCP §300.515(h)(3)). The support agency should have an adequate opportunity to review the draft ROD before it is adopted. Unless otherwise specified in the SMOA or CA, 10 to 15 working days must be established in the support agency's schedule for review of the draft ROD pursuant to NCP §300.515(h)(3).

When a State is the support agency, its concurrence on a ROD is not a prerequisite to EPA's selecting a remedy, (*i.e.*, signing a ROD), nor is EPA's concurrence a prerequisite to a State's selecting a remedy at a non-Fund-financed State-lead site under State law (NCP §300.515(e)(2)(ii)).

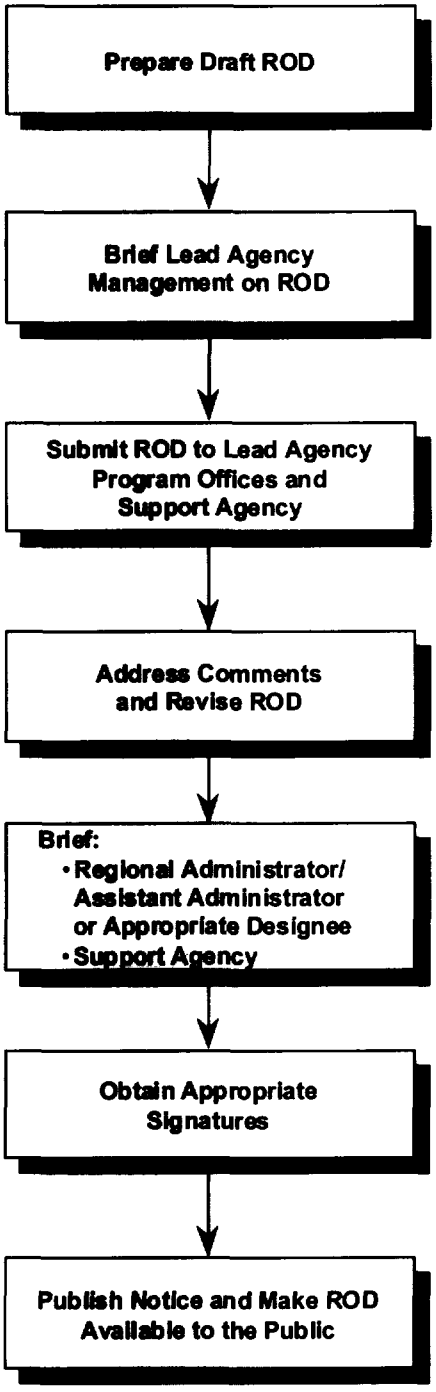
5.3 DISPUTE RESOLUTION

Continuous interaction between the lead and support agencies throughout the remedy selection process should ensure final agreement on the Selected Remedy in a timely manner. In some instances, however, outstanding issues may arise between the lead and support agencies. The preamble to Subpart F of the NCP (55 *FR* 8781), "State Involvement in Hazardous Substance Response," recommends/suggests a dispute resolution process that EPA and the State could use. Chapter 2 of this guidance discusses the dispute resolution pro-

[2] It is highly recommended that more active public involvement and State involvement activities be performed over and above the mandatory process specified in the NCP. These activities should be tailored to the specific needs of community. Active community and State agency involvement in the remedy selection process will help achieve EPA's general policy of implementing remedies that will achieve the reasonably anticipated future land uses and the potential beneficial ground-water uses where possible.

[3] The remedy must be selected by the lead agency itself. A technical support contractor hired to assist a government entity in performing its duties or a PRP can not select the remedy. Moreover, any party other than the lead agency generally should not draft those sections of the ROD that relate to the remedy selection rationale (*e.g.*, the Statutory Determinations section).

Highlight 5-1: Lead Agency Responsibility in ROD Development Process



cess presented in Subpart F of the NCP. Those resolution procedures may be used if none are specified in the SMOA or IAG.

5.4 ROLE OF OTHER EPA AND STATE PROGRAM OFFICES

Each agency should establish appropriate procedures and time frames for intra-agency review of RODs. An agency may need to coordinate with a number of program offices to ensure that technical and legal aspects of the ROD are defensible. When EPA is the lead agency, State agency participation during the RI/FS and Proposed Plan process is important to the successful selection of the remedy and its completion. In addition, concurrence from EPA's Office of Regional Counsel, and, as appropriate, EPA Headquarters, should be sought before the ROD is presented to the Regional Administrator (or Assistant Administrator, if the ROD has not been delegated to the Regional Administrator) for signature. Regional and State legal counsel should be involved early in the remedy selection process to help identify ARARs, ensure that all enforcement-sensitive issues are presented properly, and to ensure that the ROD is legally defensible.

5.5 ROLE OF OTHER FEDERAL AGENCIES

Executive Order 12580 delegates the authority for carrying out CERCLA §§117(a) and (c) to Federal agencies with Federal facilities under their jurisdiction, custody or control. A Federal agency, therefore, must issue the Proposed Plan. The IAG among the lead Federal agency, EPA and, in many cases, the State establishes the responsibilities of each party for ROD preparation and review.

For sites under its jurisdiction, custody or control, a Federal agency has the lead responsibility for preparing the draft ROD in accordance with Chapter 6 and, when appropriate, Chapter 8 of this guidance, and for carrying out the lead agency responsibilities specified in this chapter. At NPL sites the Federal agency should prepare the draft ROD, taking into consideration new information and comments received during the public comment period, and Federal facilities should submit the draft ROD to EPA (and, where designated in the IAG, the State) for EPA's written approval. The Regional or OSWER Assistant Administrator's signature (or the signature of the person to whom this authority has been delegated) constitutes final EPA "adoption" of the ROD.

The Federal agency should publish a notice of availability pursuant to CERCLA §117(d) and make the ROD available to the public before beginning the response action. At a limited number of NPL sites, the Federal agency and EPA will not be able to agree on the remedial approach for a site. If the parties are unable to agree on the draft, even after a dispute resolution process, EPA should select the remedial action for the Federal or State facility.

5.6 ROLE OF POTENTIALLY RESPONSIBLE PARTIES

Even when the PRP conducts the RI/FS, the lead agency, as designated by the SSC or CA, should write the ROD (see footnote #3). If the PRPs are not conducting the RI/FS, they should be kept informed of response activities through the community relations process and the Administrative Record file, and, where appropriate, through general or special notice letters. The lead agency could negotiate with the PRPs concerning RD/RA while the ROD is being written. These negotiations should be separate from the remedy selection process. Generally, documents that result from these negotiations are part of the Administrative Record file where they relate to, and will be considered in, the lead agency's selection of the remedy.

5.7 ISSUING NOTICE OF ROD AVAILABILITY

The ROD should be added to the Administrative Record file after it is signed. In addition, the lead agency must publish a notice of the availability of the ROD in a local newspaper. NCP §300.430(f)(6) states:

> *"After the ROD is signed, the lead agency shall: (i) Publish a notice of the availability of the ROD in a major local newspaper of general circulation; and (ii) Make the ROD available for public inspection and copying at or near the facility at issue prior to the commencement of any remedial action."*

The public notice of availability of the ROD should be brief and factual. It need not be as extensive as the newspaper notification of availability of the RI/FS and

Proposed Plan, as described in Chapter 2. The notice should use a display advertisement format and should be published in a widely read section of the newspaper.

The ROD newspaper notification should include the following:

- Site name and notice of availability of the ROD.
- The date on which the ROD was signed.
- A brief summary of the major elements of the Selected Remedy.
- Details on the location and hours of availability of the Administrative Record file and/or the information repository.
- The name and telephone number of the individual(s) to contact for further information about the site and the remedy selected.

The lead agency may find it appropriate to provide information in the newspaper notification about support agency concurrence or nonconcurrence on the ROD. A ROD notice for a Federal facility, should specify that the ROD has been prepared by the relevant Federal agency and approved by EPA. Highlight 5-2 is an example of a newspaper notification, announcing the availability of the ROD.